A DIRECTION

? Thomas or Tusser -

Preparatiue to the ſtudy of the Lawe:

Wherein is ſhewed, what things ought to be obſerued and *vſed of them that are addicted to* the ſtudy of the Law, and what on the contrary part ought *to be eſchued and* auoyded.

AT LONDON
Printed by Thomas Wight.
Anno Domini. 1600.

The contents of the

Chapter 1. Of the worthines and excellencie of the Lawe.

Chapter 2. Of the good qualities wherewith the ſtudent of the Lawe ought to be furniſhed.

Chapter 3. Of the choice which the ſtudent of the Lawe ought to make in his ſtudie.

Chapter 4. Certaine rules to be obſerued of the ſtudent in the reading of his bookes.

Chapter 5. Of the exercile and tonſorce which the ſtudent ought to vſe.

Chapter 6. That the vnderſtanding of the ſtudent ought to be proportionable to the vnderſtanding of the Lawe.

The contents of the *seuerall Chapters.*

Chapter 1. Of the worthines and excellencie of the Lawe.

Chapter 2. Of the good qualities wherewith the ſtudent of the Lawe ought to be furniſhed.

Chapter 3. Of the choice which the ſtudent of the Lawe ought to make in his ſtudie.

Chapter 4. Certaine rules to be obſerued of the ſtudent in the reading of his bookes.

Chapter 5. Of the exerciſe and conference which the ſtudent ought to vſe.

Chapter 6. That the vnderſtanding of the ſtudent ought to be proportionable to the intendement of the Lawe.

Chapter 7. That the ſtudent ought well to conceiue the reaſon and iuſtice of the Lawe in diſtinguiſhing and eſtabliſhing the propertie and communitie of things.

Chapter 8. That the words or termes vſed in bookes of Lawe ought to be vnderſtoode and applied as the Lawe doth expound and conceiue them. Whereunto is annexed a table of certaine wordes, in the interpretation whereof, the Common lawe of this Realme and the Ciuill lawe do ſeeme to agree.

Chapter 9. What methode is to bee vſed in handling & diſpoſing matters of lawe.

Lectissimis et generosissimis iuuenibus in hospitijs curialibus connutritijs, & Juris Anglicani studio operam nauantibus assiduam. S.

SI Theophrastum, vt ipsum nomen indicat, oratione diuinum, circumscripta quædam spatia, & angusti vmbraculorum circuli á frequenti auditorum corona, & publico iudicum conseßu detinuere: Si Socrates, quem sapientißimum virum, Apollo sapientißimus Ethnicorum Dæmon iudicauit, nihilo plura volumina edidit, quàm condidit, id est, nulla: mihi quidem generosissimi iuuenes, non solùm in scribendi initijs, sed in vmbilico etiam & crure valdé metuendum est, ne prima medijs, media vltimis, omnia omnibus, non apposite respondeant: Quæ enim parcè nimis traduntur desiderium, quæ prolixè fastidium pariunt, et medium quæsitum inuenire difficile, inuentum tenere difficillimum: Cum hanc

arduam sanè prouinciam primò ingressus fueram, vstud me recreauit & sustentauit solatium. Qui curas suscipiunt grauiores si mansuetis ingenijs vti volunt iudicibus, eorum audere, est agere, velle est posse, velitari est vincere. Fateor in aliquibus tenùs, vltrà, plus vltrà peruentum esse: Sed vel metam ipsam attingere, imò verò ad eam contendere, sudoris est et virtutis: Quanquã hoc AEuo, in hoc præsertìm Britanniæ Elysio, nihil in delitijs habetur præter meras orationis illecebras: mira certè quæ placeant, vermiculata verba, nectareas phrases, eloquentiam Atticam exposcunt, omnia limata, arguta, sententiosa esse volunt, planè Aristippéi sunt singuli

prauè sectum stomachantur ob vnguem.

Quarè seria & submissa prece, mihi vehementér obsecrandi estis insignissimi iuuenes, vt hic potiùs otij mei fœtus quám laboris fructus (vacatio enim hæc proxima quám sub æquinoctium autumnale Londini non admodùm inuitus egi, cum ad priuata studia et negotia multum superesset temporis, hanc vobis prolem peperit) sub candoris vestri radijs calorem et vires recipiat:

piat: cuius si compos fuerit, debebit ille quidem vigorem suum vobis, lucis vsuram mihi, fortunam mundo. Valete: Ex hospitio Graiano: pridie Nonas Septemb. An. salutis humanæ. 1599.

Vobis addictissimus
Guilielmus Fulbeckius.

Faultes escaped in the printing of the Table of wordes annexed to the eight Chapter, may be thus amended.

Fol.74.b	for	Index	read	Iudex
fol. 75.a		Debito		Debitor
ibidem.		mixt		mixtæ
fol.76.a		Doto		Dolo
ibidē.b		Fideniſtor		Fideiuſsor
fol.77.a		fato		ſalo
fol.78.b		Maritinum		Maritimum
fol.80.b		contumately		continuately
fol.81.a		vacillaus		vacillans.

The other faultes escaped in the printing of the other Chapters, a curteous eye and vnderstanding may easily reforme.

OF THE WORthines and excellencie of the Lawe.

The first Chapter.

AS nothing more encourageth the soldior to fight, and to giue forth apparant signes of valor, then the glorie & renowne which is gained by exploits of warre: so nothing is a greater spurre to the student of any Arte or Science, then the iust reward of fame and commendation, which belongeth to those, who by labor attaine to perfection in any praiseworthie science. For as nature rewardeth the Bee with hony, so Art recompenseth the painfull student with riches, praise or honor. And howbeit some men make small accõpt of praise or good report, as being in their owne conceit but an emptie sound, yet wise men haue thought & written, that a good name is better then Gold,[a] and that a mans credit is the faireſt flower of his garden. Now if praise be due to Arts and sciences, as being the

[a] Prouerb. 22 Aym. Cons. 145 viso processu in fi.

best treasure & endowment of the mind, religion only excepted, then surely the knowledge of the law may in the first place challenge prerogatiue of dignity, by whose righteous doome & decree it is prouided, ruled, & ordered, that al other sciences should haue their maintenance & support, in such plentiful & condigne maner, as by merite or equity doth to them of right apertaine. But euery art receiueth his commendation by the end & scope which it proposeth to it selfe. And the chiefe end or last marke of ỳ law aswel as other sciences is God his glory. But ỳ next & immediate end, which is allotted to it, is to administer Iustice to al, & in that sence it may be called the rule of Iustice: For religion, Iustice, and law do stand together, & are together trodde vnder foote by such as neither care for God, nor goodnes: such as are rehearsed by one of notable iudgment.[a] A wise man without workes, an old man without deuotion, a yong man without obediẽce, a rich man without almes; a woman without chastity, a gentleman without vertue, a contentious christiã, a proud begger, an vniust king, a negligẽt Bishop, a cõgregation without discipline, a natiõ without law. But Iustice is then rightly administred, when it is not sold.[b] When there is no respect of persons.[c] Whẽ hatred is away & conscience is present.[d] When rigor is tẽpered with mercy.[e] And Iustice must be regarded of the

a. Cyprian de 12. abusio.

b. Can. venden. q. 3. Canon pauper 11. q. 3.

c. Deuteron. 1

d. Can. sex. 23. q. 3.

e. Can. omnis & sequ. can. discipli. 45. dist.

the law as the load-ſtar is minded of the Sea-man, for without it can be no gouernment. An other end of ỹ law is the good eſtate of the peo-ple. For it is an *Aphoriſme* amongſt the lawes of the 12. tables: *Salus populi ſuprema lex eſto:* Let the ſafety of the people be accõpted the chiefe law.[f] And ỹ deſerueth not the name of a law which hath no relation to publik profit.[g] For *Hermogenes* ſaid wel ỹ euery law was made for the good & profit of men.[h] And *Plato* ſaith, that a Law-maker ought to haue regard of 3. things eſpecially: namely, that the cõueni-ent liberty of the comon weale may not be im-peached by the laws, that they may preſerue a-mity amongſt the people, & that they may fur-niſh thẽ with wiſdome.[i] Wherefore they that diſpiſe laws, haue no care of comon profit,[k] be-cauſe they were made for comon vſe,[l] & with-out law, which I interpret to be an order eſta-bliſhed by authority, neither houſe, nor city, nor natiõ, nor mankind, nor nature, nor world can be.[m] And therfore *Cicero* ſaith, ỹ our anceſtors were of ſuch vertue & wiſdome, that in making of their laws they had no regard, but of publike good:[n] For they would not write any thing to hurt, and if they had written any ſuch things, it would haue bin reiected as ſoone as it had bin vnderſtood. It is manifeſt there-fore that the end at which the Law doth ayme is the generall aduantage of common ſocietie

f. l. 12. tabular. c. 6.

g. Cicer. 2. de legi.

h. lib. 2. de ſtat homiñ.

i. lib. 2. de legi.

k. Cicẽ pro Cæcin.

l. lib. 2. de legi.

m. Cicer. lib. 3. de legi.

n. Cicer. lib. 1. de inuent.

in a iuſt maner diſtributed and dealt to euerie one. For, *non ſufficit bonum fieri niſi bene fiat*, It is not ſufficient to doe that which is good vnleſſe it be done in good ſort, and therefore let not any man, which vndertaketh this profeſſion lay conſcience aſide: for though the charge and calling be ſeculer, yet it muſt be religiouſly handled. For God is the author of the Law, and the reuenger of the abuſe thereof, The
Pro. 16. weight and meaſure, ſaith Solomon, are God his iudgments, and therfore if any man maintaine any wrong by colour or pretence of Law let him know, that though man be hurt, yet God is offended, ye do not execute the iudge-
Chroni. 2. c. 19 ment of Man, but of God, ſaith *Ioſaphat*. God is the beholder and vmpier of Counſailes and Iudgements, and ſurely if a man do well diſcharge this weightie and excellent function, there is no man of any religious habit or vocation in higher place or greater reckoning with God. So much the more are they to bee reproued, who exerciſe ſychophancie, fraud & caueling in the handling of cauſes, being wreſters of Lawes, and wringers of money, whoſe conqueſt in bad cauſes maketh them triumphe as much as Romulus did when he had killed his brother: nay as Atreus did when he had cõpaſt the death of his brother Thyeſtes, boaſting
o Senec in Thy: and glorying. o *nunc parta vera eſt palma, nunc meas laudo manus*, Now haue I gotten an honorable

norable victorie, nowe I praise my handie worke, but they in whom conscience beareth stroke are farre otherwise addicted, and shalbe hereafter otherwise rewarded. May euen in their life time do they possesse ỹ ensigns of authoritie & dignitie, & by good right may they challenge many special fauors, immunities & indulgences. Constantine the Emperor gaue to the professors of the imperial Lawes, full & perfect freedome from all collaterall charges, tares, and other burdens of the cõmon weale, [p] and he decreed also that certain yerely pensions should be paid vnto them out of the Treasury, [q] & the Emperor Valent. would haue thẽ which by the space of xx. yeres were professors of the law, to be illustrated by the name of Comites, a name of excellent dignity. [r] Many other priuiledges & benefits are mentioned in the Ciuil law, which belong as well to Students as to professors, and hereupon had that saying his originall.

Dat Galenus opes, dat sanctio Iustiniana:
Ex alijs paleas, ex istis collige grana. [s]

Neither hath England bin vnkind or straitt handed to men of that coat and calling: for in old time as I find in M. Plowden, who was credibly informed thereof, there were fower Reporters of the cases of Law, which were chosen men, and had a yerely stipend for their

[p] L. medic. 1. 6 de profes. & medi.
[q] D. L. medicos.
[r] l. vnica & rubri. de profes. qui in vrbe Constantinopol. docent ex lege meruerũt. Comit. li. 12. c. tit. 15.
[s] Angel. Aretin in §. proem. institut.

paines and trauaile therein, paied by the king.

t. Plowd. in Epi. a les estudents de le cõmon ley.

t. But some will say that God forbiddeth vs to contend. Who denieth that? but he doth not forbid to Iudge & determine controuersies: & there is great difference between iudging and contending: for though God do forbid thee to beate a poore traueling man: yet he doth not forbid thee to bind vp his wound, when he is hurt and maymed of others. So though he do greatly abhorre the hatred, rancor, malice, and disagreement of men, yet he is wel pleased and contented ý such pernicious & contagious diseases should be cured. Let him that condēneth the fault, approue the remedy. One mā rageth with a burning desire of reuenge: an other cōueieth to himselfe an others mans goods by craft, whom when charity & duty cannot bring into the right way, his disloial dealing must be repressed by the seuerity of Iudges. *Moses*, *Dauid Solomon*, committed no sin, when they caused wicked men to be rigorously punished: & though Christ do condemne a quarrelous & reuengeful person, yet he leaueth to the Iudges their authority, whether they rule & order causes by the Lawes & customes of nations, or by the law of *Moses*. *Ioseph*, *Daniel*, *Naaman*, the Centurion, did gouerne cōmon weales by the lawes of the heathen. Surely the politicke lawes of Kings & Magistrates are greatly to be heeded & regarded, which Christ himself allowed,

lowed, when he paid tribute to *Cæsar*. And the profession & practise of the knowledge of lawe is warrãted by the example of great men, who would not haue borne the names of professors, if the science had not contained in it singuler wit, excellent wisdome, & profitable directions for the whole course of mans life. It is well knowen that the *Camilli*, the *Curij*, the *Fabritij*, the *Fabij*, the *Claudij*, the *Scipioes*, the *Crassi*, the *Iulij* the *Ciceroes*, & the *Scæuolaes* were singuler men and singulerly skilled in law. And to giue thẽ their proper appellation were lawyers. These men gouerned their cõmon weals not in the shadow, in darknes or corners, as the *Grecians* did, but in the cleare light of the Sun, and in the face of the world, using experience as a Pilot against the boysterous & turbulent affections of the people. And therefore *Virgil* when he distributeth v. seueral sciences to seueral Countries, appropriateth the science of gouerning cõmon weales to the Romaines. v. Vir. Æneid. 6.

Tu regere imperio populos Romane memento,
Parcere subiectis & debellare superbos.

Mind thou O Romaine men by law to guide,
To spare the meeke, and ouer-master pride.

But some accompt it a matter of too great curiosity, ỳ the laws which should be plain & manifest to al should be reduced to an art obscured with difficult cases, shadowed with conceited

termes, and as it were, couered with cloudes, and wrapped in darknes: to whom I answere that it is very expedient, that there should be a certaine art and science of the Law, generall rules & preceptes, and conuenient discourses. For the particuler things which do fall vnder the obseruation of law ar infinite, & the weaknes of mans memorie cānot tollerate the multitude of particular lawes: and therefore it is conuenient that that which we call *æquum bonum*, which in plaine termes is nothing else but perfect reason, should be comprehēded and deliuered in certaine generall preceptes, and Plato alleageth this for a reason [x] because it is necessarie, that there should be *Regia disciplina* a princely science, for he suteth it with that name, which may by a generall censure, order and dispose of all things without regard of euery particular circumstance. For the certaine knowledge of matters, it is good that the law should be bounded by certaine rules & limits: For a mā could not certainly know what were his owne, and what an other mans, vnles the Law should as it were by finger point, & shew vnto him, what, when, and howe it were his, and therefore true is that saying of *Cicero*, [a] *Omnia incerta sunt cum a iure discessum est*. If you depart from Law there is no certain state of any thing. And his opinion is in an other place, [b] that our inheritance rather cōmeth to vs

x Plat. in polit.

a Cicer. lib. 9. Epist. famil.

b Cicer. in ora. pro Cæcin.

vs by the law, then by our auncestors: for though they doe giue it, or leaue it vnto vs, yet it is the law which doth settle it in vs, and doth preserue the possession thereof free and inviolate vnto vs. Wherefore it is to good purpose, that the Law should be definite in it selfe, and should consist of certaine conclusions which should be as the listes and periodes of the science, by the contemplation of which, a man may be instructed and sufficiently furnished for particuler causes and euents: For the particuler case lyeth as it were embowelled, and is implicatiuely contayned in the generall learning, and there is nothing in the Law which may not be reduced vnto some vniuersall *theoreme*, which may easily be conceyued and remembred, because it is generall. [c] And though the professors of the Law doe make particuler arguments of speciall causes, and do admire examples or cases to the illustrating of that which they do principally handle, yet the Law it selfe is compriſed within certaine rules. Neyther ought it to trouble vs, that the Law bookes are so huge, & large, and that there is such an ocean of reportes, and such a perplexed confusion of opinions, because the science it selfe is short and easie to one that is diligent, according to that saying: *Industriæ omnia serua fiunt*, All thinges are seruants to diligence, or come at her commaund, and artes

[c] Marcell. 2. ff. de iur. et fact. ignor.

are

ar not to be estemed by the greatnes or smalnes of the books, but by the goodnes of their rules. And though ỹ lawes which do bind mens liues & maners ought to be vnderstood of all, that their prescript being knowen, men may decline frō that which is forbiddē, & follow that which is commaunded: yet that may be done either by their own means, or by ỹ meanes of others: & if a mans braine be no fit mould for the Law, let an other mans mouth be his teacher. Hence commeth the name of Counsailor, because in doubtful causes he may resolue & giue counsel: Whereby appeareth aswell the necessity, as the excellent vse of the calling: for what can be more conuenient or of better opportunitie, then that a man of experience should shew the way to one that is ignorant. It is therfore expediēt that there should be lawes written, & that such lawes should not be altered without vrgent occasion: for it is a fonde part to striue against the course & stream of lawes, & customes receiued. A great question it hath bin heretofore, whether common weales were better gouerned by written Lawes, or by the present & voluntary conceit of ỹ Magistrate: This matter, because religion it selfe hath committed ciuil duties to the wisdome and ordering of man, ought to be measured by the examples of wise gouernors & by popular sense. What good cōmon weal hath there euer bin without written Lawes, which haue bin vsed by the *Egyptians*, *Cretensians*, *A-*

Name of Counsellour

thenians, *Romanes*, & *Iewes*. The writing or the engrauing of lawes in Tables is a principall cause of ỳ certainty of the same, & without certainty, it should be of smal credit: for what authority or force should it haue, if it did alwaies change like the Moone, or like *Vertumnus*: but when causes ar decides by the opinion & wil of the Magistrate, the power of gouermẽt may be in the hands of such as be vnskilful, or wicked, & so either for want of skil, or conscience, Iustice may faile of her course. How often might the pretẽce & shew of iustice beguile vs? how often might iustice be peruerted by fauor or malice? But if Lawes were not generall, & should not sometimes restrain Magistrates & gouernors, great inconueniẽce would ensue: euen as great as happened in *Athens* by the violent domination of the 30. tirants, who when they had cancelled & disadnulled the Lawes, did exercise a common butchery and slaughter of good men: Wherfore, as in dangerous tempestes the ship is not rashly cõmitted to the winds: but there is neede of a skilful Pylot by cunning & carefulnes to gouern: so the wauering & passionate mind of the Magistrate, must be ballassed and weighed downe by Law, least his own priuate affections do driue him from doing Iustice as from the hauen. *Aristotle* affirmeth, that God ruleth that common weale which is gouerned by a written Law, because the Lawes are the champi-

champions and defenders of conuenient liber-
tie, then which there is nothing more pleasant
in this life: for what thing can be more happy,
then to be free from the feare of iniury, & safely
to inioy the societie of men, and therefore he
would not haue the gouerment of the com-
mon weale to be committed to any one man,
though very vertuous, without the regiment
and direction of Lawes. Neither let any man
say, that I do sinisterly iudge of the natures &
dispositions of men, in that I accompt no man
of so approued and speciall vertue, and fidelity,
that the mannaging of common affaires may
be offered vnto him to order them at his will
and pleasure without the appointment & war-
rant of lawes: surely I could wish that euery
gouernor were a *Numa*: But yet I would
haue the law to be ioyned with the Magistrate
in the act of gouerment. Neither do I fancy
or figure in my minde any happier common
weale, then such as may accord with the tenor
and progresse of humaine affaires. If a man
should imagine that the authoritie of gouer-
ment were in the handes of the Stoikes, such
as would neither be moued by hatred, nor fa-
uour, though they in other respects were very
vnfit to gouerne, how shall their humors be sa-
tisfied, who had rather be gouerned by written
lawes, then by vpright Magistrates? for such
is the madnes and frowardnes of some, that

they

they wil not be contented with the equitie and faithfull dealing of the Iudges, but will still contend by the rigor, and dint of law, and will trie all extremitie, being often times more at iarres & at oddes with the Iudges, then with the aduerse partie: here the aucthority of Iudges will be weak, vnlesse the lawes publikely receyued do strengthen it: so that in the written lawes there is not onely a safegard for innocency against iniury, but also for the Magistrate against the importunitie of the people: But as wayfaring men whilest they trauaile are not afraide of going a stray, when *Mercuries* image doth point out vnto them the way that they are to goe: so good men when a certaine law is proposed vnto them, when by it they know what euery man ought to perform, what to auoyde, they are secured and do wholy repose them selues in the protection of lawes. To the intent that the *Hebrewes* might well agree, & haue good order amongest them selues, God did enact and establish certain lawes, that they might iudge by prescript, and rule, least the law being ambiguous might procure dissentions. And other people and nations haue either by the tyrannous domination of Magistrates, or the outragious discord of the people bin enforced to receiue Lawes as the square and measure of their actions. In the Citie of *Athens* when there was continuall debate about

about the difficult points of ỹ law thē in force, there arose three factions of men, not of the worst sort, but yet not well agreeing in matters of state: the Citie by this meane being greatly molested, and the hartes of men being edged & exasperated by the festered sore and canker worme of contention, the gouernment was committed to *Solon*: he surueying by depth of iudgement the weake, and impuissant estate of the Citie, made Lawes, whereby peace and contentment were restored: And when he saw, that these Lawes were the sinewes of the good estate of the citie, he determined that whosoeuer should hold any iudiciall place, should in precise tearmes take oath that he would iudge according to the Lawes. This was also the cause why the *Romanes* dyd flie to a written law: the Magistrates dyd arrogate & assume too much to them selues, the people did exceedingly grudge and murmure that their honest libertie was impeached by the maner of their ruling, and the best men were at variance in matters of Law: so that it was thought meete that some equall Lawes should be in force, whereby the rashnesse of the people, & the violence of the Magistrates might be moderated: For this cause the Lawes called the Twelue tables were prescribed to the City, which yoak was willingly receiued, because without laws they knew their common weal could not pros-

per,

per, nor continue. And as there ought to be a certain forme of Lawes, so these lawes ought not to be altered or abrogated wythout great occasion, & the euident aduantage of the cõmon weale. There was a Law amongest them of *Locros*, that whosoeuer would make a motion or inuectiue against any receiued law, should therof deliuer his mind, hauing an halter about his neck, & if it were agreed by the assembly, that the thing which he indeuored to perswade were for the good of the common weale, the man was safe, & receiued cõmendation: but if it were disallowed, and reiected as an vnprofitable admonition, he was streight way hanged and receiued death as the guerdon of his innouation. And in *Athens* there were a kind of men called νομοφύλακες, who in all publike meetings did sit amongest the chiefe Magistrates, & did put them in mind not to decree any thing against the Lawes in force. Thus it is euident that both the making & maintayning of lawes is necessarie. And it is rightly said of *Cicero*, that the Law is as necessary for the gouernmẽt of a state, as the soule & mind is for the preseruation of the bodie, [d] this (saith he) is the bond of all dignities, and degrees, which are in the common weale, this is the foundation of libertie, the fountaine of equitie. The will, counsel, & decree of the Citie is contained in the lawes, as the bodie can doe nothing without the soule:

[d] in orat. pro Cluentio.

so

so a citie without Law cannot vse her actions, power, or aucthoritie. The Magistrates are the ministers of Lawes, the Iudges are interpreters, the people are the Seruants, that they may haue true libertie. The Law is thus defined by Cicero, *Summa ratio insita á natura, quæ iubeat ea quæ facienda sunt, prohibeatq; contraria*, A principall reason ingrafted in vs by nature, which commaundeth the things that are to be done, and forbiddeth the contrarie, and all the particuler and seuerall lawes of diuers nations, are but the branches of this law: for the lawes be certain and cleere intelligences, and rules, whereby the mind is addressed to pursue that which is good, and to eschew the cõtrarie: and they offer to the mind the formes and *Ideaes* of vertue and dishonestie. So that in the sacred precepts of law, as in a christall glasse, a man may perceiue what he may doe with praise, what he cannot doe without infamie: for the common places, which be handled by diuers, of common duties, of that which is truly good, of that which is perfect happines, of the best estate of a common weale, do not so sufficiently qualifie and instruct the vnderstanding, as the law it selfe. But here I shalbe crossed by an other obiection, that great & tedious are the labors which are to be sustained in the study of the law. Surely there is nothing of weight or woorth, which may be compassed without

e. 3. lib. 1. de legi.

without paine & trauaile, and yet if the paine be compared and ballanced with the profite, it is but as a few drops of haile to a whole shower of Manna. What would not a towardly man do? what would he not vndertake by his wisedome & warines, to keepe all danger from the bodies, heads, and lifes of the innocent: to preserue his memorie from obliuion, and silence: to be of great accompt amongst the greatest: to attaine to that knowledge, which is the highest of all humane artes and sciences? and though it were as hard a matter for a young gentleman to gaine the knowledge of the lawe, as it was for *Phaeton* to ascend vnto the Chariot of the Sunne, who ere he could accomplish that, was to passe through vncouth wayes, and by the ghastly formes of deformed creatures, by the terrible Signes of the Bull, the Lion, and the Scorpion[f], though (I say) a Studient ought to haue all the lawe perfect, and to passe through a multitude of cases, iudgements, Statutes, arguments, treatises, comments, questions, diuersities, expositions, customes of courtes, pleadings, mootes, readings, and such like: yet sith there is no arte nor science, by which the common weale receiueth so great benefit: sith there is no course of life, no time of age, no estate of men, which can either florish or be without the safeguard of lawes, and sith the

[f] Ouid. Metamorph.

difficultie of the science is rewarded by the dignitie, credit, and ample fortune which belongeth vnto it: the hope of them which employ themselues in this studie ought not to waxe faint, nor their mindes to be daunted with the labour and paine, which all artes require: but they ought to be incited and allured to proceede in their studies by the excellent and honorable rewardes of the same.

Of the good qualities wherewith the Student *of the lawe ought to* be furnished.

The second Chapter.

BEcause many applie themselues to the studie of the lawe, without deliberate consideration of their qualities and sufficiencie, so that many times they finde not that contentment, which otherwise they might enioy. It is very conuenient that they should know what qualities are requisite in him, who is to employ

ploy his time in the studye of the lawe: for as *Aristotle* sayeth, [a] Rules and precepts haue not force in all, but the minde is to be decked with good gifts, that it may take ioy in things that be truly good, and abhorre the contrarye. The first and chiefe thing that I doe require in him, is, to haue the true knowledge, and feare of God, without which his other knowledge is but as a sword in the hand of a frantike person: and where the light of truth is not, there is a darke and tenne-folde mysse about the minde. But where God is not, there is no truth, there is no light, there is no lawe. The soule and sences, are but the instruments of his will, which hee bindeth and looseth at his pleasure. And if they turne from beholding him to the contemplation of any arte and science whatsoeuer, surely they effect nothing but their owne destruction. I knowe this is no pleasant sound to some daintie eares, who cannot tollerate any naming or mentioning of religion, which the Paganes, whome they make as presidents of their prophane manners did not onely regard, but in the very front and beginning of theyr lawes (such was their reuerence) they prefixed a precept and caueat for the obseruation and keeping of holy rites in a regardfull manner: *Ad diuos adeunto*

a. Aristot. lib. 10. Ethicor. ad Nicomach.

caste, *pietatem adhibento: qui secus faxit, deus ipse vindex erit:* Let them go to the worship of God with a chaste minde: let them vse reuerence: God will be the reuenger of him that doth otherwise.[b]. Some perhaps had rather heare a curious discourse handled by some Astrologer, whereby they might haue certaine notice and vnderstanding what complexion and constellation is most fit to enter into the studie of the lawe: with such dregs they would haue their minde satisfied. They perhaps, will beleeue (for what is more credulous then fansie) that they which are borne vnder *Iupiter*, are not fit for the study of the lawe, as *Cocles* teacheth them,[c] that they which are borne vnder *Mercury*, are of quick conceit, but quickly vnconceited, soone ripe and soone rotten, especially if *Mars* be ioyned with *Mercury* in the constellation, as it hapned according to the suggestion of some in *Hermogenes* the Sophist, who wit of Sophistry in his youth like a graue old man, and was in his old age as a trifling boy. But they which are borne vnder *Saturne*, are sayd to be more dull in the beginning, but in processe of time of more sound and deepe knowledge then others: surely I am not of opinion, that the soule and the powers thereof are subiect to the sway and motion of the planets. If I should thinke, that it were a sub-

b Leg. 12. tabular. c. 1.

of Astrology

c Cocles in Physiognom.

stance

stance flowing from the bodie, or so mingled with it, that it might be accompted a kind of bloud, as some Philosophers grossely conceiued, this might seeme vnto me probable.[d] But I am fully and immoueably perswaded, that the soule commeth from aboue into this strange matter, whereof the bodie is compacted, and is of an incorporeall nature, which is not subiect to the impression of the senses. For when sickne's affecteth the bodie, the soule is sound: and when the bodie is racked, the minde is free. Neither is it to be maruailed at, that it conformeth not it selfe to the change of the bodie, because some materiall parts of the bodie are not alway partakers of the change. Let a man go abroade in the most cold and freezing weather, yet his eyes will neuer be frozen, let him stand by a most scorching fire, yet they will neuer feele heate. The strange and different substance of them from the other parts of the bodie, I take to be the cause. Now the Planets do worke only vpon corporall things, for their influence is of the same sort as the attractiue force of the Adamant, or the Geate, which cannot worke but vpon materiall things: and therefore I may well conclude, that the Starres do not qualifie the minde, but the bodie only, which being a cotage of clay, must needs beare the wind and weather, the alteration and impres-

[d] Cicer. in Tusc. quest.

sion of the Planets. Wherfore let not any mã who aymeth at the knowledge of the lawe as the marke of his desire, make any estimatiõ of these Physognomicall fictions: let him not goe to the house of *Mars* nor to the spheare of *Mercury* for knowledge. *Si quis indiget sapientia, postulet a domino*: If any lack wisdome, let him request it at the hands of God e.

e. Iacob. c. 1.

Humilitie 2

He must likewise obserue, that the way to the hight of knowledge is by humilities gate. Let not the increase of his skil make his mind to increase, and swell, after the maner of loftie spirited men, who when they know nothing, yet would seeme not to be ignorant of any thing. Euery auditor must be willing to heare *Oportet discentem credere*, sayth *Aristotle*, f, who though he were a man of singuler knowledge, yet gaue example of great modestie, by this censure, *Maxima pars eorum quæ scimus est minima eorum quæ ignoramus*, The greatest part of the things which wee knowe, will counteruaile but the least part of the things which wee knowe not: as if a man should compare one hundred to one. But none doe more boast of knowledge, then the ignorant, as nothing soundeth more then emptie vessels: and they nourishing in their mindes a haughtie and ample opinion of their supposed abilitie, are so bewitched with selfe-loue, that they thinke they sucked

f. In Analytic. posterior.

eloquence

eloquence with their nurses milke, that the bees which are feined to sit vpon *Platoes* lips, did flye to their lips whilest that they were dreaming in the cradle: that they were able to teach old men before they had teeth: and triumphing in this conceit, they admire themselues, & disdaine others, aduancing their own doings, & discommending the fruitful labours of other men, like apes, louing their deformed children, and like phantastick Pygmaleons wooing their owne deuises. If any thing be spoken of thē sometimes darkly, and acutely as they thinke, they make an inward applause vnto thēselues, & cherish their harts with this acclamation, *facete! laute! lepide! nihil supra!* but if any thing be spoken of others aptly and sensibly, they straightway inferre, *Quanto tu melius hoc inuenisses Thraso!* But a discreete & aduised man, will iudge none to be so meane, but that he may learne something of him: for though he know more then others, yet hee must thinke, that others knowe somewhat which he knoweth not. The best and the most graue man saith *Cicero*, will confesse, that he is ignorant of many things. [f]. And Solon was not ashamed to say, that in his old age he was a learner. [g]. And Iulianus the Lawyer sayd, that though he had one foote in the graue, yet he would haue an other in the schoole. [h]. The next thing I require in a Student is temperance,

f. Cicer. Tusculan. 3.
g. Cicer. in Catone maior.
h. L. apud Iulianum de fide commissis liberal. in p.

rance, which I do not take so strictly as Aristotle doth, who defineth it to be a restreint from corporall pleasures, which are obiected to the sense of feeling p, but would haue it so largely vnderstood as Plato q, Cicero r, and now of late times Scaliger, and D. Gentilis haue taken it to be, a restreint of the minde from all voluptuousnes and lust, as namely from couetuosnes, excesse of diet, wantonnes, and all other vnlawfull delights. A Student must in his diet be temperat, and abstinent, for as Musonius sayth, Continency in dyet is the step to wisedome. t. A fat and full belly yeeldeth nothing to a man but grosse spirits, by which the sharp edge of the minde is dulled and refracted, and too much meate cast into the stomack doth ingender nothing but crudities and diseases. This measure must be vsed in our diet, that no more be taken then will suffice. Seneca prescribeth a good rule, u *Famem fames finiat*, Let hunger end hunger, which is nothing els in plaine termes, but that a man should rise with an appetite, being rather satisfied then filled. Yet he that feedeth more plenteously, is not to be reproued, if his bodie do stand in neede of more copious nourishment, and a man must not so abstaine, that the functions and duties of the minde and bodie be hindered. Good and moderate nourishment doth quicken the spirits, and they do giue

p. Aristoteles lib. Nicomachior. 2. & 3. & in lib. magnor. morali.

q. Plat. in Conuiui.

r. Cicer. lib. 1. officior.

s. Scalig. lib. 3. poetic. Alberic. Gentil. lib. de leg. 3. c. 13.

t. Stobæus de temperantia.

u. Senec. epistol. 111.

giue strength to the braine, but that which is vnwholesome and immoderate doth stop, thicken, confound, and destroy them. As in diet, so in other things, it is good for a Student to haue the rule and mastery of his mind and appetite, neither so to let slip the reignes to his desire, that he will for any commodious respect, bring himselfe to shame and obloquie, and for a present aduantage, incurre a perpetuall discredit. Plato hath a sentence worthie of obseruation x, *Et dicere & facere ea qua decent ad sobrium & prudentem hominem tantum pertinet*, To say and to do the things that are comely, belongeth only to a sober and wise man. That example of rudenes vsed by certaine Florentine Embassadors, is to be auoided. Iouius reporteth it y. They were sent as Embassadors to Charles the fift, and Pope Clement the seauenth staying at *Bononia*, and being Marthants, caried with them (such was their extreame couetousnes) certaine wares to make gaine of, thinking they should be free from custome, as going vnder the name of Embassadors necessaries. But this being perceiued to the two great Estates, moued the Emperour to laughter, and the Pope to anger, who was a citizen of Florence. The Legates departed with infamy, which they well deserued for abusing so honorable a calling by such base indignitie, which may be a warning

x. Plato in Tim.

y. Iouius lib. 28.

warning to all to preferre their credit before their greedie desires.

4. Diligence in study.

Diligence in the pursuing of any studie is of great weight and moment, and in the studye of the Lawe it hath principall force and effect, for the cases are many in number, which must be read, remembred, and applyed, which cannot bee compassed but by extreame diligence. And whereas some pretending a lumpish idlenes, would haue the Lawe measured with narrowe limits, and woulde haue the multitude of volumes, cases, rules, and diuersities abridged and made lesse, surely they giue large testimonie of their great desire of ease. But ease is a very badde medicine for difficultie, and their pretense is wholy repugnant to reason, yea to possibilitie. They that would haue fewe lawes, must procure that there be fewe causes, and little busines, which it is not possible for any to bring to passe. If it were possible for these faint students to take away the infinite and the innumerable affayres and actions of men, then that which they require might sort to good effect. But that lyeth not in their power, and therefore they should surceasse theyr sluggish surmise. For this cause *Ludouicus Viues* is iustly reprehended of *Albericus Gentilis*, in that he held, that all things might

might be finished by fewe lawes, whome *Gentilis* [a] affirmeth, to fight against common experience. For if many contentions or controuerfies should happen, which none can bridle or preuent, if the lawe shoulde not handle, discusse, and determine them all, the lawe shoulde doe iniurie, and it should not be the handmayd of Justice, it should not *Suum cuique tribuere*. So that in the Students minde this resolution must bee fixed, not to sinke vnder the burden, but with all conuenient industrie to followe hys Studye, neuer to be wearie of paynes, nor to slacken his endeuour, sith nothing of price and accompt is purchased without great labour, by which hee may attayne to the knowledge of many excellent thinges more worthie of admiration, then prayse. Neither is it seemely to pretende weakenesse of bodye, and tendernesse of complexion, when health and strength doe well serue, and may well be imployed in Studye. *Ciceroes* bodye was neyther of yron, nor of oake, yet hee was not broken, nor in manner altered by continuall night-watchings, noone-sittings, and morning-risings, by many labours, contemplations, and studyes, by the great charge of hys houshoulde, by the weighty care of the common-weale, by writing manie

[a] Albericus Gentilis dialogo primo de iuris interpretibus.

manie bookes, and epistles without number, as Cardanus well obserueth. b. And why should any man despaire to doe that which another hath done, especially hauing the like disposition of minde, the like faculties and meanes to attaine to knowledge, and the like desire. This diligence doth chiefely shew it selfe in reading and hearing. It is not fit for him that heareth or readeth, to haue a mind wauering from the purpose, and as it were going on pilgrimage. A man is then said to floate in fancie, and to wander in thought, when hee doth not bend his minde to that which is handled, and when he is amongst his bookes in bodie, but not in minde, or when he is present at some reading, and doth not shew himselfe attentiue, but doth number the tiles of the house, or buildeth in the aire, or doth nothing lesse then that which he should do: but the force of the mind must bend it selfe to that thing only which is to be conceiued. For the power of our mind and vnderstanding is more strong when it is vnited, then when it is dispersed, and distracted into many parts.

b. Lib. 4. de sanitate tuend. c. 16.

Pluribus intentus minor est ad singula sensus.

But as these things forenamed are of great consequence and value to the Student, so Wisedome that rare and excellent vertue of

Wisedome

the

the mind is of great importance, which I do rather exact, then require in a Student, for without it nothing can be done decently or perfectly: and surely to a Student of the law it doth specially appertaine, for it doth consist in the cunning discerning of the truth of euery thing. c. And a Student ought not only well to deliuer things conceiued, but well to iudge of them, and in this part standeth the best part of a Lawyer. It is the propertie of a wise man most sharply to perceiue what is true, what is false in euery cause and controuersie, not to be deceiued nor inueigled, not to be vnconstant in opinion, nor ignorant in the circumstances of things. The ordinarie meane to attaine to wisedome, is to vse time and diligence sufficient for the consideration of things, to heare reasons on both sides contending in his mind as it were armed and professed enemies, not to iudge of any thing rashly or hastily, nor to giue a sleight censure of weightie matters. For as Fabius sayth in Lyuye d. *Omnia non properanti clara certaque fiunt, festinatio improuida ac caca est*, All things are plaine and certaine to him that is not rash nor headie. Haste is improuident, and blinde, which is therefore rightly termed of Plato *Nouerca Scientia*, The stepdame of knowledge. e. And the Aetolian Magistrate sayd well, ee That there is nothing so great an enemie

c Cicer. Offic. lib. 1.

nota

d Liuius lib. 22.

e Plato in politic.

ee Liuius lib. 31.

nemie to good aduise, as hatte, which bringeth pennance swiftly, but warning too late, and without profit, because counsaile hastilie giuen cannot be reuoked, neither can the thing which is disordered by badde aduise, be entirely restored or brought into order againe. But where a man taketh time sufficient, hee cannot be sayde to doe any thing rashlie. Wherefore not vnfitlie hath it beene defined by some to be the knowledge of the opportunitte of doing things aright, and the cause that all things be well done,[f], and it hath not onely a stroake in worldly affayres, but euen in matters of religion: for by it a man may be so directed, that hee may neither decline to superstition, nor to that which is contrary vnto it, namely, impietie or atheisme. And it is the leauill or compasse of all other vertues in the accidents and affaiers of this life. It will shewe the times and measure of boldnes and audacitie, least it turne to rashnes and impudencie. It will so order Temperance the mother of order, that it may not be accompted rudenesse or inciuilitie. It will guide Justice which gouerneth all things, least it turne to crueltie: nay it wil moderate it selfe, least it be termed craft or deceipt. By these effects the Student may easily perceiue, how necessary it will be vnto him.

[f]. Diogen. Laer. in vit. Platonis. Cicer. lib. 1. officior.

The

The qualities aboue mentioned, do so directly respect a Student, that they may be numbred in the ranke either of adiuments, or ornaments. One thing yet remayneth, which is, to be placed and raunged amongst the ornaments only, being a meere ornament, yet it doth as much adorne, as the other doe helpe: and that is curtesie or mildnes, which doth as much decke and illustrate any gentleman, as the dyamond doth the gold to which it is fastned, or as the chaine of the necke doth giue a luster to the brauerie of the other partes, it setteth in order, garnisheth and graceth the other giftes of the minde, without which they shoulde be vnsauorie, and want applause. I distinguish it from Ciuilitye called *Vrbanitas*, and εὐτραπελία, for that is onely to be seene in publique meetings and assemblyes, but this may shewe it selfe within a mans priuate walles, or chamber, and may be vsed betwixt man and man. Most loathsome and deformed are the manners of the Stoikes, who whilest in sowernes of minde they seeke to ouercome mans nature, do exceede it, and of men they become beasts. And such manners haue disgraced men of excellent abilitie. *Coriolanus* was by nature a Stoike, and his roughnes of maners is iustly & worthilie reproued of *Dionys. Halicarnastaeus* g. *Cato* was both by nature and

g. Dionys. Halicarnast. lib. 8.

and profession, whom for his bitter austeritie Erasmus condemneth [h]. And surely I thinke that such rugged behauiour doth relish harshly, and is sometimes vnpleasant to them who by naturall inclination do fauour it. Heare therefore a Stoike disprayling a Stoike. *Cu. Piso* (sayth Seneca) *fuit a multis vitijs integer, sed prauus, & cui placebat pro constantia rigor* [i] Cu. Piso was free from many faultes, but yet a froward man, and was delighted with stifnes of minde in stead of constancie. *Florus* hath noted the currishnes of *Romulus* with a perpetuall blot of infamie, *Romulus ob asperitatem morum a Senatu discerptus est* [k]. Romulus for the roughnesse of his manners was torne in peeces of the Senate. But mildnesse is of that sweete and delectable nature, that it pearceth the stonie harts of barbarous people, it affecteth their eyes and eares, it bendeth the most stubborne and insolent spirits, it findeth an easie way amongst swords, it ouercommeth wrath, and alayeth hatred. [l]. This I commend to the student as a principall meane to gaine fauour, loue, and good entreatie.

h. Erasmus in Encom. moriæ.

i Senec. lib. 1. de ira.

k Flor. lib. 1. histor.

l Valeri. Maxi. lib. 5. c. 1.

The

Of the choise which a ſtudent of the Law ought to make in his ſtudie.

The third Chapter.

NOwe that we haue ſhewed what qualities are conuenient for him, who purpoſeth to gaine knowledge and credite by the ſtudie of the Law, it remaineth to giue him ſome taſte of that courſe which in purſuing his ſtudie hee may not vnprofitably obſerue. For though the way were plaine, yet to them that know it not; it is harde and difficulte. And as the firſt yoake is to the young Steere heauie, not becauſe hee is not able to beare it, but becauſe he is vnacquainted with the carying of it, ſo yong Students though they be in age and capacitie mature and perfit, yet becauſe they aduenture vpon a new enterpriſe whereof they neuer had triall, they are ſomewhat troubled at the firſt: yet in continuance of time, by labour and ſome direction of *Veteranes* in the Art, they pearce through the thornie fence or barre of theſe great difficultes: but heere let the Student take courage vnto him, and when the doore is opened, let him

not doubt to enter. As hee must not neglect time, which is a consuming treasure, so hee must make distinct choice of it, least omitting better opportunities, he doe cast him selfe into the straites of time and necessities, whereby he shall finde much incombrance, and his proceedinges shall be crossed by many interruptions. And surely as in all matters of moment, the place where a thing ought to be done is greatly to be regarded: so likewise the time wherein it is to be done. For the turning of all temporall affaires doth depende vpon these two hynges, and these circumstances doe either make or marre the substance of our actions. It hath bin questioned of diuerse whether the morning or the night be more conuenient time for the studie of the Lawe, which because it is no moderne doubt, but either part hath had fautors and patrons in all ages, and to the end that by some clerenes of reason the truth of this matter may appeare, I will bestowe some paines in the opening of this point.

Marsilius Ficinus a man of excellent learning and iudgment doth by fiue reasons proue that a man should rather rise in the morning to studie, then watch in the night. [k] His first reason is borrowed of the Astrologers, which he doth not greatly vrge, because he had smal regarde of their vaine speculations: but admitting

k. Marsilius Ficinus lib. de vita sana. c. 7.

mitting that they say to be true, he thus reasoneth: there be three planets which be verie fauorable to Students in the course of their studies. *Sol*, *Venus*, and *Mercury*, all which in the night are most remote from our *Hemisphere*, and goe into the twelfth house of the heauens, which is called the prison, towarde the West. His second reason is this. The spirits of our bodies doe followe the state and disposition of the aire. Now in the morning, when the Sunne riseth, the aire is subtilized and made thinne, pure, and free from al grosse vapours. But in the night time it is thickned, and corrupted with contagious exhalations, which possessing the sences, doe pierce into the braine. Thirdly, the day was made at the first, for labour, and the night for rest, (and therefore it is said in the 104. Psalme. Thou makest darkenes and it is night, wherein all the beastes of the Forest creepe forth, when the Sun ryseth, they retire and couch in their dennes. Then goeth man foorth to his labour, vntill the euening.) And whilest the Sunne holdeth and conteineth his race in our *Hemisphere*, with his beames he doth open the poares and passages of our bodies, and from the center, to the circumference of the same, he doth enlarge the humors and the Spirites which maketh vs more apt to labour and studie: but when hee departeth

from vs then all these thinges are bound and straitned, and then we are driuen and prouoked to sleepe. 4. Fourthly, it is verie healthfull vnto vs to vse labour or studie in the morning, which if it should be in the night the spirits being greatly wasted and consumed by the motion in the day-time, the bodie becommeth weake, and so is vtterly vnfit for any kinde of labour. And he that giueth himselfe at that time to studie, causeth the Spirits to flie vp into the head, and they being so distracted, cannot yeelde sufficient seruice eyther to the head or to the Stomache. 5. Fiftely if a man studie soone after supper, the nourishment is resolued into grosse vapors which doe fill the bodie and are verie noisome obstupatiues to the senses. For the meate being destitute of heate and spirit, doth waxe rawe and doth putrifie in the stomacke. So that the braine is offended and our studie greatlie hindred and impeached. 6. It may be added for a sixt reason, if any thing may be added to *Ficinus*. The spirits wherein all our agillitie and dexteritie doth consiste, by which the braine doth worke, are together with the other parts of the bodie refreshed and strengthened. So that in the morning they must needes be more seruiceable then at night. 7. Seuently, the phantasie or imaginatiue part of the Soule which helpeth greatly in studie, and principally in

the

the ſtudie of the Law, is in the night time confounded and obſcured. Laſtly the bodie in the night time wareth more dulle, ſo that the minde cannot vſe it as a conuenient inſtrument. For when the ſtomacke is full and ſtuffed with meate, the thicke aire being round about vs, ſtopping the poores, the great ſtore and abundance of humors is caried, as *Ariſtotle* ſaith, to the head, where it ſticketh for a time, and layeth as it were a lumpe of leade vpon the braine, which maketh vs drowſie and proane to ſleepe: then it diſcendeth by ſteppes or degrees, and comming into the other parts doth ingender ſleepe. And it is the opinion of a learned Phiſition, [m] that the nightlie ſtudie is vnſeaſonable, & that it wearieth and weakneth Students, making them leane and exhauſting their bodies. For by late watchinges their vitall ſpirits through too much intenſion are weakened, and their natiue humiditie dried vp. *Demoſthenes* did ſtudie much by candle light, and therfore his orations were ſaid to ſmell of the Lampe: but he did not begin to ſtudie till the firſt entrance of the morning, and herein he did endeuor to excel euerie man. But whoſoeuer will followe *Demoſthenes* in this, had need to be well aduiſed of the ſtrength and conſtitution of his body and to examin,

Quid valeãt humeri ferre, et quid ferre recuſent.

8.

l Lib. de ſomno & vigil. c. 3.

m Lemnius lib. 1. de complexion. c. 9.

For nature must not be oppressed, but measure and meane must bee vsed, least the stomacke being made by too much fatigation vnable to digest the meate receiued, the poares of the bodie bee cleane worne out and extinguished. The whole Senate of Phisitions doe call the morning howers, the golden howers, in regarde that the bodie is then in best temper. This may suffice to perswade, that the morning is more fit for all kinde of studie in generall, and by consequent for the studie of the Lawe. It hath bin proued by probable reasons, and by auctoritie of wise men. If this will not serue, heare the voice of wisedome her selfe. I loue them that loue mee, and they that seeke mee earely shall finde mee. [n] I haue dwelt the longer in this question, because it is very expedient for a Student, to know the best time of his studie, which if it bee vsed in season, may prosper, and take good effect: otherwise his labour may bee vnprofitable God (saith) Solomon hath made all things good in their time. [o] And Ecclesiasticus woulde haue euerie man to obserue time. [p] This therefore I will noe longer handle, being a matter plaine, but will satisfie the Student in other difficulties, which are more frequent & doubtfull, and are occasions, that many which doe enter into this studie doe breake off their course,

n. Prouer. c. 8. ver. 17.

o. Eccles. c. 3.

p. Eccles. c. 4.

course, and bid the Law farewell. The bookes of Law, say they, are not pleasant to reade, the wordes or termes are harshe and obscure, the stile no whit delightfull, the methode none at all. It is a science void of all proper definitions, artificial diuisions, and formall reasons. To answere this cauil, (for I cannot blainch it whiter.) I will vse a two-folde manner of confirmation, and will shew that either the Lawe hath those thinges which they denie vnto it, or if it doe want them, it needeth them not. The writings of wise and graue common weale men learned in the Lawe are not to be censured by Grammarians, and Rhetoricians, who make a gallant glosse of *Clytemnestraes mules*, Alexanders horse, and such frituilous vanities. For their studie was farre different being for the generall good and commodious gouernement of the common weale. And if any man reproue them for want of sharpenes of inuention, and finenes of witt, let him be well aduised, and consider the substance of their workes, and he shall find, that they caried *Mercurie* in their braine, and not on their tongue, and that they wantid not wisdome, though they were defectiue in Rhetoricke, which not to haue ioined with wisedome, is so far from fault, that if they had conioined it they had cõmitted a fault, for who will not dispraise & detest curled haire, & paynting

Obj. that the studie of the law is harsh.

Ans.

of the face in an aged Matron. And in their writinges wherein their chiefe purpose and addresse was, to search out the truth of doubtfull matters and to deliuer it to posteritie, there could be nothing worse, then a curious kind of stile, which is vsed commonly of them, that seeke to flatter & to dissemble, and to bewitch with a familiar kind of perswasion the common people, with whom such flowers are of more accompt, then substanciall fruit. All kinde of things is not conuenient for all sorts of men. Rethoricke I graunt is a pleasant thing, and full of delite. But in professors of grauitie, neither comely nor commendable. Who would not allowe a tripping gate, nimble handes, glauncing eyes in a Stageplaier or dauncer. But in an auncient Citizen, or graue Philosopher, who would not dislike them, blame them, abhorre them. If we see a young Damesell pleasant and talkatiue, we doe not reproue it in her, but if we finde that in a Matron, wee loath and condemne it. And truely from the purpose and practise of graue men, there shoulde bee nothing more different, then that which sauoreth of too much daintinesse or curiosity. Alcibiades his shooe is not fit for Socrates his foote, and it is not conuenient for graue men to celebrate the feast of Bacchus in the Temple of Vesta; there is great distance betwirt

the

the ſtyle of the *Courtier*, and the profeſſor of the Law: For if the Courtier ſhould neglect delicate ſpeech, he ſhould be no good Courtier: ſo if the profeſſor of the Law ſhould affect it, he ſhould not ſpeake like a Lawier. If *Pythagoras* could haue lyued without meate, he would not haue eaten ſo much as herbes, and if he could haue expreſſed his meaning by ſignes or geſture, or by any other meane then ſpeech, he would neuer haue ſpoken, ſo loath was he to offend in ſuperfluitie: Therefore the writers of the Law are not to be reproued for doing that, which if they had done they might iuſtly haue bin reproued. *Cicero* when he treateth of matters of Law, ſpeaketh like a Lawyer, and a Lawyer muſt ſpeake as the Law doth ſpeake: Therefore *Baro* [q] ſaith well, the writers of the Law would not haue left to poſteritie, ſo many Law-bookes, if they had affected a choice phraſe of ſpeach. And ſurely if when the Latine tongue did moſt flouriſh, the *Caſars* and *Cicero* himſelfe, did not vſe any gorgeous and ſtyled kind of ſpeech in matters of Law, ſhall we deſire it of *Bartolus*, *Bracton*, *Britton*, and *Glanuill*, when eloquence was in the Eclipſe or wayne, & exceedingly decayed. *Varro* ſaith, that by the diuerſe mixtures of people & nations, olde wordes grow out of vſe, and are changed, and new do take place: [r] How can it then be, but that the Common Law ſhould haue

[q] in Epiſt. ad Com. Iuſt.

[r] Varro lib. 4. de lingua latin.

haue harsh, obscure, difficult, & strange tearmes by the commixtion of the seueral languages of the *Saxons*, *Danes*, and *Normans*, the authors of the same. *Polybius* reporteth, that there was such alteration of the *Romane* language soone after the expulsion of their king, vntil his time, that they which were most skilfull of antiquitie could hardly vnderstand a great part of the words [f] which doubtles was a great impeachment to learning and knowledge. If the receiued wordes of the Law should be altered, it may well be presumed that many auncient bookes of the Ciuil law, & the old yeare bookes would in short time, be hardly vnderstood: And I am fully perswaded, that if the auncient Tearmes of the Law should be changed for more polite and familiar nouelties, the new tearmes would be nothing so emphaticall and significant as the olde. The wordes of the law may be compared to certaine Images called *Sileni Alcibiadis*, whose outward feature was deformed & ouglie, but within they were full of iewels & precious stones: so the wordes of the Law, though they be rude in sound, yet are they preignant in sense. But some perhaps will say mine eares cannot tollerate such an vnpleasant sound and so confused a style, O delicate fellow, when you go to the Theater or dauncing Schoole repose your selfe wholy in your eares, but when you come to heare matters

[f] Polybius lib. 3. hystor.

ters of weight handled & discussed, rest not vpon your senses, but vpon your mind & vnderstanding. *Alcibiades* was more moued by the naked speech of *Socrates*, then by the laboured eloquence of *Pericles*: But this *Rhetoritian* wil replie: I confesse the Law to be of it selfe a reuerend & excellent thing: but it would be no whit worse, if it were more finely and politely deliuered. Who wil deny that which is comely of it selfe, to be made more comely, if other thinges be added to adorne it? To answere this briefly and plainly, many things there be to which if you should adde any other thing, you should take away their grace and beawtie. They be of their owne nature in so good estate, that you can not change them, but you must needs make them worse: A Tombe or pillar of marble, if it should be painted with any colour, should lose the former grace, & be a great deale worse: & a beawtifull face is often disgraced, by a needles ointment, & so it is of other things which of them selues are fayre & comely: the thing which is added hydeth that which it findeth, & sheweth that which it bringeth: & these thinges which ar handled in the law are not adorned by the varnishing of art, but are obscured by it. And it is not conuenięt in such a serious matter to dally with tropes & figures, nor to riot with superabundãce of words, nor to florish wt eloquẽce & diaperd phrases: But yet he will

Obj: will further obiect, Though it do not belong to the professors of the Law to speake and write figuratiuely; yet surely it behoueth them to speake and write in good congruitie, which notwithstanding they do not. I would gladly know what congruitie it is which Curiositie doth require: The fine *Rhetorician* will say, *absurda consuetudo disrumpenda est*: The Lawyer, he will say, *vsus contra rationem annullandus est*, he will say that this is not Romaine latine, it is most true: therefore (will he conclude) it is not well spoken, nor *congrue*, the argument halteth. The *Moscouite* will speak of a thing after one sort: the *Fleming* after an other sort will vtter the same thing: neither of them speake in Latine, but in their owne language: do they not therefore speake right? yes, they speake right and *congrue* in their owne language, and so do the Lawyers in their owne dialect and language proper to their Art. Doth any man thinke that these words, *Bellum, Exul, Sylua, Proscriptio, manus iniectio*, were vnknowen to the auncient writers of the Law? Yet sometime they doe not vse these, but in stead of them they say, *Guerra, Bannitus, Boscus, Attinctura, Arrestū*. But it is conueniēt that they should vse these latter words, being proper to their Art or science. Neither is it meete that they should change them for the words of a strange language,

A: guage,

guage. Wherefore *Scaliger* doth vpon good cause dispraise the *Grecians*, because they doe expresse things merely forraigne and external by wordes of their owne Idiome: and commendeth the *Romanes*, because they did apply forraigne wordes to forraigne matters. And the common law being deriued from the *Normans*, and other nations, doth conueniently retaine the words of the first Inuentors. And because amongest Lawyers Latine wordes be vsed many times in an other seuere then they are vulgarly and commonly taken, it is not good to haue the interpretation of such wordes from any other then the Lawyers themselues. And though the *Grammarians* and *Antiquaries* do in the Etymologicall interpretation of wordes excell: yet the writers of the Law in the Analogical interpretation of such Latine wordes as do belong to their art do farr surpasse them. I do not think any exquisite skill of the Latine tongue to be necessarie in a Lawyer: but hold it sufficient if he know so much thereof, and in such maner, as the common sort of men, which are conuersant in the reading of Latine bookes. And *Plato* hath a good saying to this purpose, that these things ought of necessitie to be knowen, whereof if a man should be ignorant, he should be said to be shallow and superficiall. So much therefore of the Latine tongue ought to be knowne, as will

t. Iuli. Scaliger in exercitation.

v. Plato lib. 7. de Legi.

will keepe a man free from such reprochfull tearmes. The auncient Reporters and handlers of the Law whilest they writ of Fines, Vouchers, Remitters, Restitution, Releases, and such intricate matters, had no leasure to note the properties and rules of the Latine tongue in *Cicero*, *Plinie*, *Plautus*, and *Varro*: they inquired not which was good Latine, but what was good Law: But they were wise in their Judgements, circumspect in their aduise, sharpe witted in their arguments, graue in their speech, subtill in their questions, cunning in their resolutions: they were excellently instructed to distinguish of ambiguous thinges by most wittie diuersities, to open and to argue harde and enigmaticall cases by sound and inuincible reasons, to confute that which was false, and confirme that which was true. And whereas they are impeached for the want of good and proper definitions, let me aske of these strict *Logicians*, what a definition is? I thinke they will say that it is a briefe and plaine declaration of the substance of a thing: and be there none such in the Law? surely many: but they will haue it to consist of the proper *genus* and the proper difference, as they learne it, without adding any thing els: But it is sufficient if it expresse the nature of

of the thing, whereunto it is applied. May not these be admitted for good definitions, A Fayre is a great Market: a Market is a little Faire: a village is a multitude of houses: a Countie is a multitude of villages, Do not these sufficiētly expresse the nature of a Faire, Market, Village, and Countie: yet if they should be tried by the touchstone of the *Logicians*, they would be vtterly reiected as not currant. Some do spend a whole decade of howers in doing nothing els, then seeking out the proper *genus* and difference of one onely thing, and when they haue done, they are scarsely so wise as they were before, they may say of themselues as *Gentilis* speaketh of them berie fitly: *Confidentia astra petimus, ruimus in præcipitia*. x. Their diuisions like wise are reproued, because they doe not flow from the essence of the thing diuided: Yet it is sufficient if they doe briefely diuide a thing into his particulers. Who can disallow of this diuision vsed in the Law, whereby all causes are said to be eyther criminall, or pecuniarie: none but such as will finde a knot in a bulrushe. Againe, they say their reasons are not artificially concluded: Surely, it is not for any man, vnlesse he bee in the Schooles to tye himselfe to a precise kinde of syllogy small logike: But if it go to the end of the controuersie, it is sufficient, and that is the opinion of

x. Abberic. Gentilis li. 4. de Iur. interp.

of *Alciat*.[a] Their Methode is amongest other thinges reproued, or rather their want of Methode, which exception wanteth trueth. All bookes written of the Law may be reduced to these fower heades: either they are Historical, as the yeare Bookes of the Common Law: and *Lasius* his counsailes in the Ciuill law, in which no Methode is requisite, but it is sufficient to report the thinges done, and how they were done: or explanatory, as *Mast. Stamford* his Treatise of the Prerogatiue, and the discourses of diuers Glossographers, & Commentors in the Ciuil Law, wherein no strict Methode can be obserued: For the Commentor must needes follow his authour euery way that he goeth: And if there be no Methode in the one, there can not iustly be any demaunde of the other. For he that vndertaketh to comment, or to confute, must applie himselfe wholy to the course of his authour, or the aduerse partie: And therefore *Scaliger* said very aptly to *Cardanus*, *Sequor te non quò ducis, sed quò trahis*:[b] Or els they be Miscellaneall, and in such there needeth no Methode, because things of diuerse sort, and not depending the one vpon the other are laide together: And such are the Abridgements of the Common Law, and the *Pandectes* of the Ciuill Law: Or els they be Monological, being of one certain subiect, as *M. Stamford* his booke intituled the

a. Alciat. lib. vlt. parerg. c. vltim.

b. Iul. Scalig. in exercitati.

Pleas of the Crowne, *Ma. Lambards* Iustice of peace, whom if any reproue for lacke of methode, surely his iudgment is out of order, and that excellent Booke of *Albericus Gentilis*, a Ciuilian *De legationibus*, then which I haue not seene any thing done with more plausible, artificiall, and exact methode which as it is verie hard for any to imitate, so it were to be wished, that he would in some other like treatise equall himselfe.

But yet an other obiection hauing more fauorers then the former must bee answered, which is that the Law is vncertaine, and that Lawyers in their opinions and arguments do greatly differ, and dissent. But here the matter is greatly mistaken. For the Law it selfe, which doth consist of agreable cõclusions, and of the iudgements, awardes and opinions, to which reason and truth haue subscribed, is not vncertaine, how-be-it they which doe argue of new questions, and causes neuer heard off before, or such as for their great difficultye haue not yet bin decided, doe in argument contend amongst themselues: but that which moueth disputation is not the obscuritie or doubtfull vnderstanding of the Law, but the qualities and circumstances of the persons, of the actions, and accidents, of the time, the place, the antecedents, and consequents. And though reason be opposed to reason, and circumstance

to circumstance, yet the Law is neuer opposed to it selfe. And if a man will condemne an art, because the professors and practisers are diuers in opinion, surely there is no art, nor science, which will be free from condemnation. Goe to the Historiographers, who should report the truth of euerie thing, you shall finde them at great oddes: *Lyuie* against *Polybius*, *Plutarche* against *Liuie*, *Sigonius* against *Plutarche*, and *Xiphilinus* the interpreter and abridger of *Dio* against his authour. *Dio* reporteth a prodigious miracle, which *Xiphilinus* altereth, setting a new face vpon it, and discrediting his authour. [c] Goe to the Grammarians, you shall find seuen great Masters at variance about this one word *Anticomarita*. [d] Goe to the Philosophers, there is great dissention and a diametrical repugnance of opinions amongest them: there you shall see the Parepatetikes against the Academikes, the Epicures against the Stoikes, the Cyrenaikes against the Cynikes, the Nominalles against the Reals, the Carpentarians against the Ramistes. Goe to the Schoole of the Phisitions: you shall haue the like disagreement: Galen against Hipocrates, Auenroes against Galen, Auicenna against Auenroes, Paracelsus against them all, and Erastus against him. Will any man nowe condemne Historie, Grammer, Philosophie, and Phisicke?

c. Xiphili. in vita M. Anto. Philoso.

d. Erast. li. Colloquior. in Synod. Gramma.

If

If not, then it is euident, that an Art or Science is not to bee reproued, because the writers thereof doe in opinion or argument disagree. No more is the Law to be dispraised, but rather to be liked for the varietie of opinions in it. For as by the collision or beating together of Flint and Iron fire doth appeare, So the truth is discloſed and made manifeſt by the conflict of reaſons. A man ſhall more eaſilie and diſcreetely iudge of thinges (ſaith *Ariſtotle*,) If he haue hearde the reaſons on both ſides contending like aduerſaries. [e] But if ſome men be more contentious in points of Law, then others, that is the fault of the men, but not of the art. The knowledge of the Law (ſaith Cicero) is not Litigious, but the ignorance thereof. [f] And if a man ſhould deferre his ſtudie of any art, or ſcience, vntill the writers thereof did fully, and vnitedly conſent, It woulde bee as vaine a thing, as if a man ſhoulde purpoſe his iourney from London to Yorke, but ſhoulde make a vowe not to begin his iourney, vntill all the clockes in London ſhoulde ſtrike together.

e. Ariſtot. metaphy Sicor. 2. c. 1.

f. Cicer. lib. 3. de Fini.

Now that I haue remoued out of the way all ſuch obiections, as might be occaſion of impediment, and interruption to the ſtudent, I thinke it not beſide the purpoſe, to preſcribe and commend vnto him ſome ſpeciall writers

of the Law, in the reading of which, he may with aduantage and ouerplus bestowe his paines.

He that frameth himselfe to the studie of the Ciuil law, may very profitably imploy his paines in reading of the *Code*, *Nouellaes*, and *Pandectes*, which are necessarie for the profession. Of the auncient writers I thinke these are most conuenient to be read, *Bartolus*, *Baldus*, *Paulus de castro*, *Philippus Decius*, *Alciatus*, *Zasius*. Of the latter writers, *Budæus*, *Duarenus*, *Cuiacius*, *Hotomannus*, *Donellus*, and amonge these, yea aboue these, him whom I lately named *Albericus Gentilis*, who by his great industrie hath quickned the dead bodie the Ciuil Law written by the auncient Ciuilians, and hath in his learned labours expressed the iudgement of a great state-man: the soundnes of a deepe Philosopher, and the skill of a cunning Ciuilian: Learning in him hath shewed all her force, and he is therefore admirable, because he is absolute.

The common Lawe is for the most part contained in the bookes called the *Annals* of the Law, or yere Bookes, all which are to be read, if the student will attaine to any depthe in the Law. In them he shall see notable arguments well worthy of paines and consideration. The two late reporters are *Ma. Plowden*, and *Sir Iames Dyer*, who by a seuerall and distinct

distinct kind of discourse, haue both laboured to profit posteritie. Some humors doe more fancie *Plowden* for his fulnes of argument, and plaine kinde of proofe: others doe more like *Dyer*, for his strictnes and breuity. *Plowden* may be compared to *Demosthenes*, and *Dyer* to *Phocion*, both excellent men, of whome *Plutarche* reporteth, that such things as were learnedly, wittily, copiously, and with admiration dilated, and deliuered at large by *Demosthenes*, were shutte vp in fewe wordes, compendiously recited, and with admiration handled of *Phocion*.

There be certaine auncient writers of the Law, namely *Bracton*, *Britton*, and *Glanuille*, whom as it is not vnprofitable to reade, so to relye vpon them is dangerous: for most of that which they doe giue foorth for Law, is nowe antiquated, and abolished: their bookes are *monumenta adorandæ rubiginis*, which bee of more reuerence then authoritie.

Ma. Fortescue in his writing sheweth a sharpe iudgement, and in this is exquisite, and artificiall, that where hee endeuoreth to bee plaine, he spareth not to be profound. For he writ to a King, who desired to haue intricate things plainly opened.

Ma. Littleton layde a sure foundation of the Law, and by his owne booke hath deserued more praise, then many writers of note and

name by their ample volumes: out of the great bookes of the Lawe hee gathered the most speciall cases, which were either generally agreed vpon, or by the Court awarded to be Law, or else in all ages received for positiue rules. For very few there be throughout his whole treatise, which may not be signed with one of these three markes: his booke doubtlesse is of such singularity, that *Littleton* is not now the name of a Lawyer, but of the Law it selfe.

M. Fitzherbert must needes be commended for great paines, and for well contriuing that which was confusedly mingled together in many yeere Bookes: but he was more beholden to nature, then to art, and whilest he labored to be iudiciall, he had no precise care of methodicall pointes: but as hee was in conceit slowe, so hee was in conclusion sure: and in the treatises which hee of his owne penning, hee sheweth great iudgement, sound reason, much reading, perfect experience, and in the whole conueyance of his discourses giueth sufficient proofe, that hee sought rather to decide then to deuise doubtful questions.

Mast. Brooke is more polite, and by popular and familiar reasons hath gained singuler credite, and in the facilitie and compendious forme of abridginge Cases hee casteth away

away the garland. But where *Ma. Fitzherbert* is better vnderstood, he profiteth more, and his Abridgement hath more sinewes, though the other hath more vaines, but I am loath to make them countermates, and therefore leaue the iudgement thereof to others.

In *Ma. Parkins* his booke be many commendable thinges, deliuered by a readie conceit, and pleasant methode: many excellent cases which sauour of great reading, and good experience, his Treatise is to young Students, acceptable and precious, to whom his verie faultes and errours be delightfull, but it might bee wished, that hee had written with lesse sharpenesse of witte, so hee had discoursed with more depth of Iudgement. For hee breaketh the force of weighty pointes with the shiuers of nice diuersities, yet many thinges are to be allowed in him, many to be praised, so that the reader be carefull in his choice, wherein he was too careless.

In *Mast. Stamforde* there is force and weight, and no common kinde of stile: in matter none hath gone beyonde him, in methode, none hath ouertaken him: in the order of his writing hee is smoothe, but yet sharpe, pleasant, but yet graue: famous both for Iudgement in matters of his profession, and for his great skill in forraigne

learning. And surely his methode may bee a Law to the writers of the Law which shall succeede him.

Ma. Rastall for his long and laborious trauaile in collecting matters of weight, and moment, which lay dispersed, and reducing them to a conuenient forme hath deserued neuer to be forgotten. And I know not whether I may more iustly commende him for his greatnesse of knowledge, or for the largenes of his books and labours, or for his speciall care of doing things exactly.

In *Ma. Theloall* his Digest of writs, diligence and desire to profit is eminent. He endeuored to be like *M. Stamford*: but he is so farre distant from the delightfull progresse of his stile, and methode, that he may seeme to haue liued in some other age a long time before *Ma. Stamford*. But as his strength was lesse, so his labour was equal. For in handling one title of the Law, he hath dealt so painefully, that no point can be named concerning that Title, which he hath not discussed, nay to giue him right, hath not fully discussed.

Ma. Lambards paines, learning, and Law, appeare by his bookes, which are conducted by so curious methode, and beawtified by such flowers of learning, that he may wel be forted amõgst them to whom the Law is most beholden. His stile runneth like a tẽperate streame,

his

his excellent knowledge and vse of antiquities argueth no small reading, and a singuler conceit: He hath bin so vniuersally beneficiall to the whole Realme, that whosoeuer despiseth his workes, bewrayeth himselfe.

M. Crompton hath taken great paines in this studie, and his bookes are in euery mans handes, which prooueth their generall allowance, his cases are verie profitable, and apt for the title to which they are applyed, and so compendiously collected, that a man may by them in few houres gaine great knowledge.

Certaine Rules to be obserued of the Student in the *reading of his bookes.*

The fourth Chapter.

NO actions haue good successe, which be rashly and *ex abrupto* vndertaken wythout direction: for where aduise faileth, there fortune is blind, and not in other cases, and it is farre greater trauaile to atchiue any matter of difficultie by selfe labour, then by the prescription and instruction of others: Wherefore it shall not be inconuenient to propose cer-

certaine rules, by which the Student may hold an euen course in the study of the Law.

In the vnderstanding of the Law the Student must not vary or depart from the proper sense & signification of the words, vnles therby some absurditie, inconuenience, or vniustice may appeare: for otherwise the propertie of wordes is strictly to be maintained, & reteyned. Therfore let him be diligent to search out the proper sense of wordes: for as *Celsus* saith, *Scire leges non est verba earum tenere, sed vim et proprietatem*, [a]. To know the Law is not to know the wordes of the law, but the force and property of the wordes: for wordes are as it were seruants to things, because they were first inuented for the plain & perfect discription of things: for though nature do make soundes, yet industrie doth coyne words, without which our vnderstanding might be contemplatiue, but not practicall: for without them the vnderstanding is in maner bound, or maimed, because without freenes of speech, and plentie of wordes it can not display it selfe, nor extend his force to the opening & discouerie of any mean matter. And as art maketh the mind to speak, so the mind or vnderstanding maketh art to write. Certaine it is, that without words a mans meaning may not be certainly knowen: Of wordes some be artificiall, & some inartificiall: Inartificiall are those which the common or vulgar sort of men

a. Celsus li. 9. digestor. Plowd. Comment. 82. per Saunders.

words 2 sorte
some artificiall
some inartificiall

do vse for the deliuerie & declaration of theyr intentions and meanings, seruing not for the illustrating of artes and sciences, but only for mutual conference betwixt man & man: Artificiall, are these which the inuentors of artes haue deuised for acquainting the mind with the rules & mysteries of their arts, because words fitly & accomodatly vsed are the perie images and representations of thinges, which do leade the vnderstanding as it were by the hand, to the apprehension & perfect knowledge of the thinges them selues: wherefore in this respect diligence must be vsed of the Student.

2 Where the Law is obscure, that sence must be taken which is least preiudiciall: for euery perfect speech of man consisteth of two thinges, of wordes, and of meaning, and when both the wordes & meaning are plaine and manifest, he that doubteth of any thing is rather foolish, then curious: But when the wordes be directly repugnant to the meaning, the whole proposition or assertion is meerely voide. Obscuritie in writing or speaking, is when the sense can not be gathered, 1. by that which of the most part of men is vsually done, 2. nor by that which was vsually done by him that vttered the wordes, 3. nor by the custome of the countrie, 4. nor by the common vse of speech, 5. nor by the premisses nor by the sequel: And therefore if a man will

will hyre workmen, and will couenant wyth them that he will giue them as much as other men of the same village or parish, if some giue by day iii. pence, some vi. pence, some ii. pence, the couenantor in this case shall giue but ii. pence: [aa] because *in obscuris quod minimum est sequimur*: Otherwise it had bin if it had bin plainly & expressely said (as much as any other man of the said village or parish.) So if a man promise vpon good consideration to giue to euery of the Canons of a Cathedrall church a quarter of Wheat euery yere, and the number of the Canons be augmented: yet the graunt is restrained to that number, which was at the time of the grant. [aaa] Yet the Law doth sometime construe deuises by mediocritie: [b] As if a man deuise to one two cuppes for his table, without expressing the mettall whereof they shall be made, they shall neither be of gold as the best mettall, nor pewter as the baser mettall, but of Siluer as a mettall betwixt both: But that is, because euery deuise ought to be interpreted for the benefit of the deuisee, & yet as neere the meaning, & as farre from the preiudice of the deuisor as may be: Therefore in deuises not words but meaning is followed, & a transposing of the wordes may be vsed if the meaning require: confused thinges must be distinguished, generalitie restrained, seuered things must be conioyned, implied things must

aa. Guido question. 252.

aaa. Imo c. literas de rescript. 38. H. 6. 10. 39. H. 6. 6. Temp. E. 1. Common 28. & 21. E. 3. 2. per Wilby.

b. Philip. Dec. Comment. ad regul. iur.

be

be explicated. But in bargaines & contractes we must not respect so much that which was meant, as that which is spoken, because bargaines do properly consist in *facto*, & therefore in matters of contract a mans will is rather gathered by his wordes, then by his meaning: for, *propositum in mente retentum nihil operatur*, and as the wordes do sound, so his will is to be construed: and the wordes of the contract be the substance of the contract.

3 When the opinions of the learned in the Law are repugnant the one to the other, it is the safest and best way to follow that opinion which is most agreeable to reason: for if contrarie reasons be probable, the better of them is to be chosen, and that which is more consonant to Equitie: and where the reason of the Law doth faile, there the disposall of the law doth faile: [bb] As of the contrary part where, the reason of the law taketh place, ther the law taketh effect. [c] But if contrarie reasons doe seeme to be of great force, wherof the one tendeth to a publique good, the other aymeth at a priuate aduantage, that which is for the common good is more to be imbraced, fauored, & followed: for that which is good to many must needes be good to euery particuler person: and these things which are generally expedient, ar with good reason preferred before such things as do peculiarly profit. [d] But that reasō which is

bb. li. adiger. § quamuis. de iur. patron. li. 7. P. tit. 14. c. cum cessante de appell. c. l. non possimt et li. nam et ait Pedius de ll. in p.

d. Iulian in l. ita vulnerat. § quod si quis absurde ad leg. Aquilei.

is for the profit of a priuat man, and doth not preiudice cõmon right, may well be admitted. Publike profit may be considered after fower maners, 1. when profit doth accrue both generally & particularly, as by the gouernment of Magistrates, [e] 2. when the profit is general, but not particuler: as *locupletatio ærarij*, the enriching of the Treasury in Cities & Townes corporate, [f] 3. when the profit is priuate, but yet a publike good commeth of it: as the dowry of women, and the infranchising of Citizens, 4. when it doth so profit particulerly, as that it doth not disprofit generally: [g] as when we say that it is not expedient, that men should mispend their goodes, or throw them into the Sea: That reason therfore is of more force in law, which is more generally commodious.

e. l. i §. huius. ff. de insti. et iur.

f. l. pen. c. de princip. li. 12.

Atq; ipsa utilitas iusti prope mater et æqui. [h]

h. Horati.

It is good therefore for the Student to sift out the reason of the Law, & that by very diligent & earnest search: for the reason of the law is the life & soule of the Law: Wherfore not without good cause is *Bartolus* reproued of the Ciuilians, [i] for that he denied reason to be of the essence of the Law: And surely I thinke there is no Law wholy without reason, I mean which was not grounded vpon reason at the first making of it. Yet I will confesse that the reason of many Lawes is so obscure, and vncer-

i. Alciat. li. 1. de verb. sign.

vncertain, that it can hardly be found out, conceyued, or deliuered. The Law is the inuention of wise men, who would not make any thing publique without reason, though the reason of the Law may be hid from him, from me, and from a number of men: Neither are we to think that any Law is therefore without reason, because a reason therof can not be rendred: for as *Cicero* said well, *Iniquum est quod accidit non agnoscere, si, cur id accidat, reperire nequeamus*,[l] It is an vniust thing not to acknowledg the thing which hath happened, because we cannot find out the reason, wherfore it happened. It is not good to affirme that the Lawes made by wise men do want reason, because we can not discouer ẏ reason. But as I do not like *Plato* his conceit, whē he forbiddeth yong men not to inquire of the reason of the lawes:[m] So to be too curious in the inquisition of it, wil be rather matter of trouble then of praise to the Students: Therfore it is a point of humility & modestie to think those things, which by graue & sage men haue bin established for law, not to be without reason, though ẏ reason therof can not be discerned. And that which *Gentilis* wittily speaketh of the Ciuil law, may be affirmed of the cōmon law of this realm, *Rationem vbiq; habet, sed non vbiq; conspicuam*.[n] *Castrensis* is so peremptory for ẏ reason of the law, ẏ he boldly auoucheth, ẏ he neuer saw any law, wherof he did not see the reason.[o] *Theodosius* did ascribe

l. Cicer. in ora. ad Brut.

m. Plat. lib. 1. de leg.

n. Alber. Gentilis lib. 2. Epistol. c. 2.

o. Castr. in eo § item si reip.

such aucthoritie to the deceassed professors of the law, that he would haue their answeres in doubtful matters to haue the force & strength of a Law. And the same thing was done by *Augustus*, as *Pomponius* reporteth. p. But yet I could wish, as *Gentilis* q. & *Alciat* r. do require, that the aucthorities and cases of the learned writers of the Law should rather be weighed, then numbred: that is, should rather be examined how they accord with reason, then how many they be in number: but if it so fall out, that two men of great iudgemēt do dissent, his argument is to be held for Law, which reason doth informe & enforce to be agreeable to the truth: For no man will intend the meaning of the Law to be, that the opinion of any man, though singuler in knowledge, should be preferred before the truth: For both the Lawyer & Iudge are the ministers & dispensers of Iustice, & of the giftes of God, & are seruants to God him selfe: but the seruant must not do that which the Master will not permit: but neither Iustice nor God will do any thing against the truth: Therfore, neither the Lawyer nor Iudge ought to do any thing against ỹ truth. If Iustice should iudge according to opinion, & not according to verity, it should thē do iniury, which thing is against her nature. And though many arguments be made for the preseruing and maintayning of the rigor of Law, yet none of

p. li. 2. de orig. iur.

q. Abberic. Gentil. lib. 3. Epistol. c. 17.

r. Alciat. lib. 4. perarerg. c. 17.

of them ought so to be admitted against iustice and truth, as that occasion of iniurie may seeme thence to arise, whence right and equitie should proceede: [s] because no reason of the lawe, no course of equitie will tollerate, that those things which haue bene conueniently introduced for the profit of men, should be against their profit with a more hard and rigorous interpretation restreined. For these things which be established for a certaine end, ought not to worke the contrarie. [t] But some perhaps will obiect, that a Iudge ought to determin and a Lawyer ought to argue, according to the knowledge which he hath by the written lawe, and that is the reason and conscience of a Lawyer, as he is a Lawyer. But surely such arguments are not proofes, and such iudgements if they be not according to the truth of the thing it selfe, in reason are not sound nor maintenable. For euery proofe should be a true assertion, and euery iudgement the rule of truth. And how can that seeme iust according to the lawe, which appeareth to a mans conscience to be vniust. Surely the light of the truth in an honest mind dimmeth and obscureth all cauils and quillets: And it is a friuolous dreame to thinke, that a Lawyer hath one conscience as a Lawyer, and an other conscience as a Christian. For he hath but one soule, and know-

[s] l. meminerint. c. vn. vi. lib. 42. coll. 9.

[t] l. quod fauor. c. de legi.

ledge of the truth, and therefore but one conscience: for *conscientia* is *cordis scientia*, and no reason will require that a lye, by any distinction shoulde bee preferred before the truth. The principall meane to enquire after the truth of euery thing, is to examin of two or more contrarie reasons whether is more probable. That which is plausible to common vnderstanding is tearmed probable, and whē the words of a couenant or deuise be cleare & manifest, we follow the literall sense of thē without farther inuestigation, because in things that be certaine, and apparant, there is no place for coniecture: but whē the words be obscure, or whē some thing is omitted, least the graunt, couenaunt, or deuise do faile, we haue alwaies recourse to that which is more probable, and wee imagine that more was spoken then written, and more intended, then vttered. And it is not conuenient, that in the affaires of men, the interpretation which dependeth vpon probable coniecture should be excluded. A thing may be probable many wayes, first, by the common vse of speech, [c] secondly, by comparing the consequent with the antecedent, thirdly, by the circumstances of a mans actions, fourthly, by the concordance or agreement with the lawe, because euery one is intended to cōforme his will according to lawe, vnlesse the contrary be proued:

a. l. non aliter. ff. de legat. 3. b. decis. Neapol. 44. Numb. 26.

c. Marius Salmonius ad l. omnes populi ff. de iustitia & iure.

ued: [d] but it may be sayde, that where the wordes of the law do faile, the law it selfe doth faile. [e] And wordes were inuented, that they might shew the meaning of the parties, therefore we must not regard that which is probable, but that which the wordes do sound. [f] To this I answere, that there ought to be no departing from the wordes, and from the true propertie, vnlesse there bee apparant proofe of an other meaning: [g] but where an other meaning doth appeare, there the toung yeeldeth to the heart, and the wordes do giue place to the meaning. [h] The wordes onely in such case are not to be regarded, but wee must consider what was meant by the person, quantitie, qualitie, place, time, precedents, consequents, and other circumstances. [i] And where it is sayd that if the wordes faile the lawe doth faile, it is true, vnlesse there bee some secret intent of the lawe to the contrarye, [k] the ground whereof is probabilitie. And though a mans sense and meaning be declared by his wordes, [l] yet because there bee more thinges which wee thinke, then which wee speake or write, the speech of a man is not alwayes the touchstone of the minde, but the concurrence of circumstances: and though a mans wordes ought to be taken most strongly against him, [m] yet they are wel to be sifted & examined [n] least the interpre-

d. quæro. §. inter locatorem. ff. locat. e. L. 4. §. toties ff. de damn. infer.

f. l. si repeteni di c. de condic. ob causam.

g. l. non aliter ff. de leg. 3.

h. Bal. in c. mandat. de rescript.

i. l. penult. ff. ad exhib. Alciat. in l. 1. ff. de verb. sign.

k. Tiraquell. in l. si vnquam ad verb. lib. Num. 35. C. de reuoc. donat.

l. Quintilian. lib. 7. c. 7.

m. ad. d. l. si inguam in princi. num. 54.

n. l. semper in stipulationibus ff. eod.

interpretation bee too burdenous in some case, o and so vniust against the partie. A mans speech doth consist of words and meaning, euen as a man himselfe doth consist of bodie and soule, or to make the matter more plaine, the words are but the superficies, and the intent or meaning is the substance. p And the lawe traceth the meaning of a man by the circumstances, euen as the hunter traceth the hare by the print of his foote. q Yet I would not that a mans deede or act in the countrie should be made frustrate by some Iewish or misticall interpretation: but such an intendment must be taken, as the words being compared with circumstances will yeeld. For words are not by violence to be racked, but by circumstance to be ruled. And wee must alwayes so interpret, that a mans right may be vpholden. But it may be further obiected, that in graunts and contracts, and in other priuate affaires *Casus omissus habetur pro omisso* r and the intention or meaning of a man, which is not apparant and manifest, is as a child vnborne, which is of no account till he be brought to light. s For a mans speech is an externall act, which is ordained for the declaration of his inwarde meaning, t and therefore words are sayd to be the limits of our meaning. u To answere directly, these words (*Casus omissus &c.*) are to be vnderstood onely

o. Loriotus de reg. axiom. 105.

p. l. tutor petitus §. 1. ff. de excus. tut.

q. Bartol. in l. si quis serio coll. vltim c. de fur. & Cons. 275. lib 2. num. 2.

r. l. si commodissim. ff. de liber. & posthu. l. post dotem. ff. solut. matrim.

s. l. Vlt. c. de posth. hæred. instit. Bald. ad l. 1. C. qui admit. ad bonor. post. & col. 9.

t. l. Labeo ff. de supell. legat.

u. Socyn consi. 4. lib. 4. Iason. Cons. 140. lib. 2.

onely in such cases where a thing is omitted, both in respect of the not expressing of it, and in respect of the not implying it. But where the lawe will vphold the meaning of the partie, there is no neede of words: and though words were inuented, that they might expresse our thoughts, yet by them onely our meaning is not signified. But there be other signes [x] namely, the circumstances before the acte, in the acte, and after the acte. Thus it is euident, that the best and most probable reason in the conflict of opposite arguments, is to be sought for by the Student, and how it may be found.

x. l. 3. ff. de testi. l. de minore. ff. de quæst.

4 The best interpreter of the law is common reason and intendement. [a] Wherefore if any one mans opinion do differ from common reason, let the Student auoide it. Neither are such things without cause to be altered, which haue alwayes heretofore receiued a certaine interpretation. [b] Neither is the common lawe any other thing, then a determinate order established and ratified by common consent. Wherefore *Bodinus* saith not well, who putteth this difference betwixt a lawe and a custome, in that a custome is accepted by the plausible agreement of the multitude, but a lawe springeth vp in a moment, [c] and is commaunded by the authoritie of the Rular, many times against the liking of them that are

a. l. si de interpret. ff. de ll.

b. l. minime ff. de legi.

c. Bodin. lib. 1. de repub. c. 10.

bound by it. For common lawe is that which is made and approued by common allowance, and therefore it is lawe, because it is commonly vsed for lawe. Wherefore *Athenæus* [d] and [e] *Polibius* do vpon good ground & reason reproue the lawes of Plato, because no nation of Greece could be perswaded to vse them: but as Plato faigned lawes, so he might likewise faigne men to vse them: therefore Horace sayd rightly, *Quid leges sine moribus vanæ proficiunt?* Lawes without vse are vaine and profit not. [f] But here it is good for the Student to be assured of what nature & qualitie the thing is which I call common reason or intendement, for that may seeme to offer doubt, whether we ought to ascribe common reason and opinion to the number of authors, or to the worthines of them, or to the perswasion of reason which doth *concludenter demonstrare* to the sense & vnderstãding of ỹ most part of men of indifferent capacitie. I would haue cõmon opiniõ takẽ according to this last brãch.

5 The things which be odious in lawe must be restrained, & the things which be fauorable must be enlarged. Priuat customes are odious in the eie of lawe, & whatsoeuer swarueth frõ common right: [g] for the cõmon law was framed in fauour of publike tranquilitie, & therefore the departure frõ it must needs be accounted odious. [h] The lawe is more prone to acquite,

d. Athenæus lib. 12. c. 22.
e. Polibyus histor. lib. 6.
f. Horat. lib. 4. carm. ode. 24.
g. c. cum dilect. de consuetud. l. cum quidam. ff. de lib. & posth. h. Aymo consil. 170. nu. 3. Baldus in l. non possunt ff. de legib.

quite, then to condemne: [i] and because it is better with the restraint of an odious constitution, to absolue one that is giltie, then with the enlarging & amplifying of it to condemne one that is innocent, [k] therefore there is nothing that requireth more diligence & consideration, then to deale warily where there is great danger to any partie, that a man may not rashly determin of a mans credit, bloud, or life: sith these things be of that qualitie, that being once lost, they cā neuer be repaired. [l] But to know whether things be fauorable or odious, the things are not to be cōsidered in thēselues, but theffects which proceed of thē [m], as dower is fauored in respect of the widowhood, & desolatenes of the woman whose husband is deceassed. [n]

i. l. Arrianus. ff. de oblig. & act.

k. l. absentem. ff. de pœnis.

l. cap. vbi maius sup. de elect. lib. 6.

m. Alciat. ad l. 2. in num. 44. de verb. oblig.

n. L. 1. ff. solut. matrim.

6 It must likewise be obserued, that when a thing is forbidden, all things that follow therof are likewise forbidden: as on the contrary part when a thing is granted, all things are implicatiuely graunted with it, whereby we may attaine to the thing graunted: [o], and if the beginning of things be forbidden, the end also is forbidden according to the rule, *Qui meditatur principiū meditatur etiā finem*, [p] and things are principally forbidden for the end to which they are directed. But here a distinction is to be vsed, for where the consequēt is of it self auaileable, and doth not necessarily

o. l. ad rem mobil. ff. de procur. l. 2. ff. de iurisd. om. iud. Temps E. 1. Grauntes. 41.

p. bald. ad L. quamuis. c. de fide comm.

depend vpon the power and vertue of the antecedent, it may be of force, though the antecedent be forbidden, q. for then it is without the cause of the prohibition: but if it depend essentially vpon the antecedent, it is otherwise. For the better vnderstanding of this rule, it is good to be seene what may properly be sayd a principall thing, and what an accessorie. That is principall which is of greatest moment: an accessorie thing is that, which by consequence goeth with the principall. If the Queene graunt vnto one *Cognitionem causæ*, her highnes graunteth vnto him the hearing of the parties, and the examination of witnesses. So the margarites or pretious stones that be in gold or siluer, do yeeld vnto it, and do passe with it, because they are but the ornaments thereof, and were applied to the decking and beawtifying of it. An accessorie briefely may be taken to be that, which is adioyned to a thing, and is lesse then the thing to which it is annexed, either in substance or in valew, or in respect both of substance and valew.

q. Baldus ad l.non dubi.in 13.oppositione

principall

accessory

7 The validitie of an act must be especially fauored, vnlesse there be a manifest nullitie in the proceeding. r. Therefore whensoeuer the nullitie of an act shall appeare by the proceeding of the parties, which is sayd to be euident, and notorious and excluding all cauill,

r. l. quoties ff. de verb.oblig.

cauill, & it is to be held as voyd, but if the nullitie proposed do not so appeare, but requireth a deeper search, because many times error is obiected that the Sute may be protracted, there consideration must bee vsed. But in doubtfull causes interpretation must bee so made, that the acte may rather stand then fall. But the obiection of error is alway to be fauored, when the error alligned doth concerne the figure & solemnitie of iudgement. [r] And therefore he that will dispute of the validitie of an award or iudgement, ought to be warie and carefull, that he put the axe to the roote, and that he first examin the iurisdiction and power of the Iudge, because that being the basis and foundation of the iudgement, if that fall, the rest cannot stand. It is therefore to be cõsidered whether he were a competẽt Iudge by reason of the cause, of the parties, of the time, and the place. For by reason of the sute or cause, a Iudge may be incompetent, as if the cause belong to a meere iurisdiction, and the Iudge be only a Magistrate in a certaine corporation: or if the cause be ciuill, and the Iudge who taketh connusans of it be Iudge of Gaole deliuerie, or if the Iudge be secular, and the cause Ecclesiasticall, or if the Iudge haue some other limited iurisdiction, and he taketh connusans of a cause not cõprehended within the lists & bounds of his commission, he

f. Bart. in l. 3. parag. condemnat. ff. de re iud.

r. 9. E. 4. 3. gloss. in verb. defensiones in de sæpe de verb. figu.

he may be incompetent also by reason of the place, as if he iudge of causes without his territorie, or circuite, or els within his territorie, but yet in a place exempted, he may be incompetent by reason of the time, as if he did iudge before he had his commission, or after his commission expired, or if his iurisdiction were suspended, as at festiuall times, which wee call *dies non iuridicos*, or at such a time, when a greater Iudge was present: or if the Iudge were called to a higher place, or if he were forbidden to exercise his power. And also the person & qualitie of the partie is to be considered, because some by reason of a legall impediment are vncapeable of the aduantidge of lawe, as these that are outlawed, excommunicate, and out of the Queenes protection. And there can be no fast roote or sure ground of their proceedings, for such are to be denied audience, because their offence & default ought not to find patronage. Likewise there may be a default in ỹ party making an Attorney, as if he could not make an Attorney in that cause, or else by reason of the Attorney himselfe, as if he be vncapeable of such an office as being not lawfully authorised. But if a iurisdiction be giuen and graunted to one, it is to be intended to be giuen him *accumulatiue, & non priuatiue*, rather to enlarge, then to diminish his power. And though a Iudge of the Gaole deliuery

being

being appointed and ordained by commission to the hearing of causes criminall, may not principally inquire of causes ciuill and pecuniarie, because it is a Iurisdiction limitted, yet incidently and as it were by the way, for the better examining of capitall crimes, hee may take notice of such things. But if the processe and iudgement bee framed against one, who is not onely not subiect to his iurisdiction, but is also free from the iurisdiction of euery man liuing, as if the partie be dead, concerning whome, no acte can be conceiued or vpheld, the Iudgement is voide.

Thus haue I shewed to the Student in so generall manner as the order of this treatise doth require, and likewise so particularly, as to his vnderstanding may be playne and manifest, what course hee ought to take in examining the cases, reasons, opinions, arguments, proceedings, and iudgements, whereof he shall finde great store and aboundance in his bookes. Now I will by fauour discend to describe and delineate vnto him briefely (for it is a matter which may be handled plainely and in fewe wordes) what course hee ought to obserue in the exercise of his studie.

Of

Of the exercise and conference which the Student of the lawe ought to vse.

The fifth Chapter.

EVery art and knowledge produceth effects, and like a good weapon is vnsheathed & vsed in time conuenient, otherwise it would be quickly ouercast and eaten with rust. But there is nothing that with so much brightnes and glory illustrateth our knowledge, as the orderly and iudiciall applying and accommodating of that which we haue read. For as a man knoweth by his bookes, so he is known by his practise, and by that which he is able to performe in the faculty which he professeth, and hee which knoweth to himselfe is not knowne of other men. Wherefore I suppose it a thing of exceeding moment for the Student, to demeane himselfe well in his conference and exercise, least the multitude of howers which he hath spent, do slip from him without

without vse, as the sand falleth out of the howre-glasse, when no man seeth or mindeth it.

1 The student of the lawe ought to haue great regard of his speech, and that he deliuer his opinion or argument in conuenient and orderly sort, not after a rude confused and impolite manner, and hee who is not onely wise but eloquent, is without comparison the best in all professions which consist in practise and in the forme of speech. Therefore parents and tutors in the Vniuersity should haue principall regard, that he who is to addresse himselfe to the study of the lawe, may be fitt with a plausible grace to discourse and dispute, and euen in the prime of our yeares this care must be had. For by nature we hold that fast which in our tender yeares we conceiue, and the worse sort of things do stedfastly abide in vs, the better is soone turned to worse, but in this matter it is good to follow the precepts of such as be neyther too curious nor too ignorant: for there is nothing more like a may-game then these vaineglorious persons, who haue decked themselues with a false perswasion of knowledge. To the Student of the lawe I doe therefore thinke this course necessary, because he must liue in great celebritie in

the

the assembly of the people, and in the middest of the common weale. Let him therefore enure himselfe from his youth, to frequent assemblyes: let him not be afrayde of men, nor appalled or tymerous through a shadowed kinde of life, least when hee shoulde make vse of hys studye, hys eyes vaste at mid-day, and all thinges bee newe vnto hym, who seeketh that in hymselfe, which is to bee done and performed in a multitude: Yet I woulde not haue hym too curious and deynty in hys speeche, for wee must vse wordes as wee vse coyne, those which be common and currant. And it is a great errour for a man to estrange himselfe from the common vse of speach, and to exceeding preciseneste in wordes, and stile, doth quench the heate of our inuention, and hydeleth the course of our wittes. Yet it is commendable to haue in our discourses both good wordes, and good matter. For *Cicero* dyd not fight with armour of proofe onely, but wyth bright-shining harneste, when hee did not onely gayne the admiration of the Romanes, but theyr acclamation also and applause. But let good wordes conteyne in them good matter, that the Argument or discourse may not shyne as it were by oyle and oyntment but by

bloud

bloud and complexion. It is a feauer-like payne to endure a mans speech, loadned with superfluous wordes. In all thynges *decorum* must be obserued, least that which wee saye, doe turne to laughter, or loathing, and purchase the name of folly, a meane must bee kept, least our speach bee drye and faynt, or else too copious, and full of circumstaunces: yet it is better for the inuention to bee abundaunt and copious, then to bee leane and poore. Wordes if they bee not vested with the substaunce of thynges, are of no force: Rhetoricke which is the Artificer of perswasion, if it bee seuered from circumstaunces, and raunge without learning by a facile kinde of sway. It is called *Atechina*. If it bee applyed to the destruction of good men, it is tearmed *Cacotechina*, but if it bee bestowed in vayne and superfluous matters, it may bee tearmed *Mataeotechina*, a friuolous labour, and a tryflyng arte. There is nothing whiche more beawtifieth a mans speeche, then an apte diuision or partition of the thynges which bee handled, whiche doth ease the mynde of the hearer, prepareth the mynde of the vnderstander, and refresheth the memorye, and (as *Iustinian* sayeth) the obscurytie

obscurytie which doth ryse of a confused text, is by separation and diuision dispersed and removed. [a] And as the diuision of fields doth make the tillage more plentifull and sightly, so doth partition in the handling of causes, adorne and garnish them. These things may be aptly deuided which haue a seperate reason, and are sorted to diuers endes.

a. Iustin. in §. alio. insti. quib. modis tes. infirm. & in §. sed ne in primis de leg.

2 Students shall not do amisse, if at certaine times they meete amongst themselues, and do propose such things as they haue read or heard by that meane to be assured of the opinion of others in such matters. By this course it may be brought to passe, that euery one may both better vnderstand, and more firmely reteine in memory the thinges which hee hath read or heard, and these things which be to good purpose vttered of others, hee may enioy as his owne. For priuate conference there is no time amisse; *Adrianus* the Emperour (as *Dio* reporteth) did handle and discusse pointes of lawe at dynner tyme. *M. Cato* euen in the Court whiles the Senate was assembling, did busie himselfe in reading: and surely, he that hath a minde to learne, may learne at euery place, and at euery tyme.

3 Gentle-

3 Gentlemen students of the Law ought by domestical Moots to exercise and conforme themselues to greater & waighter attempts, for it is a point of warlike policy, as appeareth by *Vegetius* to traine young Souldiours by sleight and smal skirmishes for more valerous and haughtie proceedinges,[b] for such a shadowed kind of contention doth open the way, and giue courage vnto them to argue matters in publique place and Courts of Record, and it will not be amisse sometimes to reason together, before men of more reading and greater iudgement which may friendly admonish them; and if they erre reduce them into the right way. It is good to bring such matters into question as be disputable, & may deserue argument, for it were a vaine thing to make a doubt of that which is plaine and manifest, as whether a rent or annuitie ought to be paid to a dead man, or whether a man may commit an offence against the Law without punishment and such like, wherein if a man should aske any mans opinion, hee might perhaps receiue such aunswere as *Labio* did of *Iubentius Celsus*: *Aut non intelligo quid sit de quo me consulis, aut valde stulta est consultatio tua.*[c] It is euident that one Law may with good probability beare seuerall interpretations, but that sence is most to be imbraced which doth take away the occasion of doubting, the way to re-

b. Veget. lib. 1. de re militari.

c. l. Domitius Labio de testâ.

moue doubt, is to examine well the reasons of the contrary part, wherefore *Baldus* saith well.

Ferro aperire viam qui per contraria transit. d.

d. In l. precib. c. de impub.

And to loose doubts is to find out the truth as *Aristotle* saith, e. but often conference and priuate debating of points of Law, is the fountaine and originall of exceeding profit, for by it the wit, the memory and the tongue, are greatly furthered and holpen, and a man is made more ready & bold for publike matters, and the truth which is the marke of our study, doth more easily appeare. Wherefore it is not vnfitly said of *Marcellus* the lawier, that euery art by continual exercise doth receiue increase. f. The wit if it be somewhat dull is by conference more sharpened, if it be ripe and ready it is a great deale more furthered, and to the memory nothing can be more profitable, which of it selfe is so brittle and tender, that vnlesse it be renewed with continual exercise, it will easily perish. And in vaine shall a man passe away the night without slepe, or the day without recreation, in vaine shall he run ouer the volumes of the Law, in vaine shall hee inquire after the opinions of the learned, vnles his memory do represent and readily offer vnto him these things being with great labor followed and atchiued when time and occasion shall require, I neede not shew how much it doth benefit

e. Arist. Metaphys. 3.

f. In l. legatis §. ornatri. de leg. 3.

benefit of it

nesse & polish the tongue: for conference is the proper exercise of the tongue. I said that boldnes is procured by the frequent meeting and communication of students, & I wil auow that which I haue auerred, for as by degrees a man doth conuerse and talke with his companions and such as be better then himselfe, so by degrees he groweth bolder, which may bee gathered by that Fable of Esope: The Fox did by chance mete the Lyon whom he neuer saw before, & was so affrighted that his senses were almost lost, when he saw him the second time, he feared likewise, but nothing so much as before, but when he saw him the third time, hee was so little afraid, that he went vnto him and talked with him. I said further that it was the high way to discerne the truth of euery thing, and therefore *Archadius* saieth of *Herennius Modestinus* that by much disputation he atteined to excellent iudgement, g. wherfore let the student often resort vnto his fellow students, and amongst them let him be well aduised of his choise.

g. In. l. munet. §. mista. de muneri. & honori.

4 After priuate and home exercise, publike exercise must ensue, which must not be rashly done, but there must be both maturitie of yeres and aduise, least the vnripe braine doe make the forehead to blush, and in stead of praise we reape contempt. Surely it is the beginning and foundation of impudency, for a man to

because the opening of the doze, and the holding of the Candle was not parcel of the consumation of the act, and so was the Law taken 3. of *Queene Elizabeth.* [1] An adulterer did counsell the woman to murder the child when it should bee bozne, the child was bozne and murdered by the Widwife in pzesence of the Mother, and by her commandment, The Mother & the Widwife be pzincipal, and the Adulterer but accessary, because his counsel was before the birth, and he was not cooperant in the act, but because the foze of his perswasion and counsell did continue vntill the murder it being not countermanded by him, therefoze he was held and adiudged an accessarie, but whether in the same case if the woman be admitted to be accessary, whether she should bee a traitresse oz no, because the pzincipall is no traytour, is a question which may well beare argument on the one side vpon the letter of the Law, and on the other side vpon the meaning of the Law, but of this matter I haue giuen the Student a sufficient taste, and my meaning was in this treatise rather to dzawe the lineaments of things, then to discusse them to the full. These may serue to pzepare the minde of the Student to handle such things as may seeme to be contradictozy in the body of the Law.

[1] 3. Eliz. 186. Dyer.

6 That the Student may with moze ease com-

compas and accomplish the things precedent, it is good for him to haue great care of preseruing and continuing his memory, and therfore it is a profitable course vnder titles to digest the cases of the Lawe, into which they may transfer such things as they haue either heard or read, neither is it safe to trust to other mens Abridgements which are little auaileable to such as haue read little, but that which we by our owne sweat and labor do gaine, we do firmely retaine, and in it we do principally delight, and I am perswaded there hath neuer bin any learned in the Law, and iudicial, who hath not made a collection of his owne, though he hath not neglected the Abridgements of others. The memory is specially to be helped and increased of the Student, for though it be the gift of nature, yet by industry it becommeth more excellent. For the integrity of the memory it is good to haue sound health & conuenient digestion of the meate, and a mind free from all other thoughtes, It helpeth it much to make good diuisions, for he that deuideth things aright, can neuer erre in the order of things. There is nothing surely which doth either more growe by diligence or by negligence more decay then memory, It is not good trusting to a suddeine memorie, but a nights rest will adde great strength vnto it.

Of what force memory is by nature and labor *Themistocles* may witnes, who in one yeares space did speake the Persian language verie perfectly and *Mithridates* who did well vnderstande the two and twentie languages of the nations whom he did gouerne. *M. Crassus* whiles he was President of Asia attained to the fiue differences of the Greeke tongue. *Cyrus* did remember the names of all his Soldiors who were in his Campe. And if memory be necessarie for any science, surely to the profession of the Law, it is of weightie importance, which because it doth pursue *accidentia*, and *infinita* requireth no helpe of nature so much as memorie, for the vnderstanding conueyeth the cases to that treasury, out of which it draweth them as often as vse and opportunitie doth demande. But if the vnderstanding be good, and the memorie nought, a man shall be a Lawyer to day and none to morow. Wherefore in this part the Student must excell, and that he may excell, he must labor, and that hee may labor, he must haue health, which I wish vnto him.

That

That the vnderſtanding of the Student ought to be proportionable to the intendement of the Law.

The ſixth Chapter.

THe Law conſidereth thinges according to publique reſpect, that is, as much as concerneth the common weale, not according to their contingencie in *facto*, which is euery mans obiect, and familiar to common ſenſe, and therefore needeth not any artificiall handling: And the Students vnderſtanding muſt be ſo requeſtred & refined from vulgar opinion: being the mother of error, and meaſuring thinges onely by the ſkinne, and colour, that he muſt comprehend & conclude many things, which are verie remote from the reach of the the ſenſes, and from ordinarie apprehenſion: in which contemplation the common Law of this Realme of England aboue all other doth ſhew wonderfull ſharpnes, and a moſt exquiſite conceit, ſubtilizing thinges whereof common ſenſe hath but a confuſe knowledge, being guyded by the principall reaſon & inſeperable truth

truth of euery thing, which the vnderstanding straineth out of the secret and hidden causes of thinges: for as in hearbes, if we touch them outwardly, we do not finde nor feele any moisture in them, but rather take them to be drie, vntill by pressing or distilling of them, we wring out a iuyce proper to their nature: So the Law doth conceiue and conclude many things of ordinarie contingents, which common sense can not perceiue, but rather imagineth them to be clean contrary to the truth, wheras they may to a good vnderstãding easily appeare to be true by the certaintie & necessary coordination of their causes and reasons. That this may be made euident I mean to annexe some particulers for the explaning therof.

Nota

1 It is cleere by Law, that a terme and a freehold of the selfe same thing may be both in one man at one time, yet if this be deliuered to a superficiall vnderstanding, it will seeme a paradoxe. Tenant for terme of yeres maketh his executors & dyeth, the executors purchaseth the reuersion, in this case both the terme & fee-simple are in the executor to seueral purposes: for the terme shal be assets to the vse of the testator, & the fee simple free inheritance for the vse of the executor & his heires, [a] And if a man be seised of land of an estate for life, the remainder to his executors for yeres, he may deuise this term or assigne it. [b] And if lessee for yeres grant

a. 43.E.3.27.et Br. cases.

b. 16.E.2.per Herle, Couenants 25.

grant his terme to the wife of him in ỹ reuer-
sion, & to a stranger, the inheritance of the hus-
band can not extinguish the moitie of ỹ terme:
because he hath the inheritance in his owne
right, & the terme in right of his wife. [c] A man
seised of land in right of his wife is attainted
of felony, & the king seiseth the land *pro vita
viri*, the king hath but a chattel & the wife the
freehold: for if a stranger enter, & the husband
dye, the wife shall haue an Assise. [d]

c. 14.Eliz.416. Com. Bracebridges case.

d. 4.E.3.47.

2 Likewise it will seeme strange, though in
Law & reason it be true, that a man should be
remitted to his land to some intent, & yet not to
an other: As if a recouerie be had vpon a false
title against tenant in taile, the tenant in taile
dyeth, the issue entreth, he is in of his first right
against all but onely the recoueror. [e] So if te-
nant in taile discontinue, & his sonne & heir ap-
parant disseiseth the discontinuee to the vse of
the father, the tenãt in taile dieth, the sonne by
M. Chookes opinion is in his remitter against
all, but onely the discontinuee. [f] the issue in
taile which hath good cause of a Formedon in
the discender, is of couin that A. should disseise
the discontinuee against whom he recouereth:
he shall not be remitted in respect of him, but
shal be accompted a disseisor: [g] but against all
others it seemeth that he is remitted. Te-
nant in taile maketh a feoffement to the vse of
his wife and his sonne being heire apparant

e. 12.E.4.21. per Choke.

f. 12.E.4.21. per Choke. et vide 7.R.2. tit Entre en le Per, en le collect. de Bellew.

g. 18.H.8.5. 15.E.4.4.

to

to the intaile and dyeth, the issue is remitted against all persons but onely the woman. [h]

h. 4.E.6.68. Dyer.

A title may be executed to some intent, and yet not executed to an other: And therefore if there be tenant for terme of life, the remainder in fee to a stranger, against whom a recouerie is had *pro loco & tempore* in a Warrantia chartę, brought by a stranger of other land, he in the remainder dyeth, the recouerer is impleaded and voucheth the heire of him in the remainder, and recouereth, tenant for life dyeth, execution shall be sued against the heire of the land whereof his auncestor had a remainder, because there was a remainder executed in the father to this intent at the time of the Warrantia chartę brought: [i] but to all other intents it was executory, for it was not executed that the wife might be endowed, nor for him in the remainder to bring a writ of right, [k] But the remainder in such cases is to some intents executed: for if he in the remainder hath alienes his remainder in Mortmaine, the lord might haue entred, [l] and vpon such a remainder the lord may haue a Cessauit, [m] but the heire shall not haue an Assise of Mortdauncester. [n]

i. 15.E.4.13. per Littleton.

k. 40.E.3.43.

l. 15.E.4.13.

m. 27.E.3.87.

n. 39.E.3.3. Mortdauncester 50.

4 A thing may be extinct or in suspence in one respect, and in Esse in an other respect: the father being tenant in taile alieneth the land with warrantie, and hath a rent charge in fee issuing

Fitzh. Na.bre. 196. k.

illuing out of the land of his ſonne and heire apparant, which rent diſcendeth to the ſonne, this rent is a good aſſets for the value in reſpect of the diſcontinuee: and yet it is extinct in reſpect of the iſſue. o. A man ſeiſed of a rent ſeruice is bound in ſtatute ſtaple, and after purchaſeth the land, out of which the rent is illuing after execution, the rent is extinct, as to the conuſor, but in Eſſe as to the conuſee. p. A corrodie is graunted to I. S. for life, who grauntech it backe to the grauntor for terme of yeares rendring rent, the corrodie is in Eſſe as to the payment of the rent, but in ſuſpence as to the taking of the corrodie. q. And it was lately ruled in one Caires caſe in the Court of wardes, that if a man held land of the Queene by a certaine rent, and the Queene graunteth the rent to a ſtranger, who grauntethit to the tenant, the rent is extinct as to the payment, but in Eſſe as to the tenure. The King ſeiſed of a forreſt graunted the office of the forreſter to one rendring rent, and he graunteth the forreſt to an other, the forreſter forfayteth his office, yet the grauntor ſhall haue the rent: r. So that it muſt needes be that the office to the intendment of law is to that intent in Eſſe. And if a man graunt to an other a rent out of his land in fee vpon condition, that if the grauntee or any of his heires dye, their heire being wythin age, the rent ſhall ceaſe during

o. 31.E.3.Garrantie 39.

p.4.Eliz.205. Dyer.

q.20.E.4.12. 22.E.4.17.18.

r.26.Aſſ.p.60.

during the minoritie, if the grauntee dye hys heire wythin age, his wyfe shall haue dower, but *cessabit executio* during the nonage: But in this case it seemeth that if the heyre dye during his nonage, the wyfe of the heire shall not haue dower of the rent: because it was neuer leuiable by the sonne, as it was by the father. A man seysed of two acres of lande hath issue two daughters and dyeth, now the rent is in suspence, as to one moitie, and in Esse as to an other moitie.

f. 10.H.7.13. per Keble.

t. 9.E.3. Charge 4. 9. Ass. p. 22.

5 The intendement of the Law is as stronge in a matter of law, as the trueth it selfe in a matter in *facto*: And therfore if A. be disseised, and hys brother maketh a release with warrantie to the disseisee, and afterward entreth into religion, this warrantie shall be a barre to A. although that hee be lyuing: for A. may haue his land by discent, and therefore it seemeth to be reason, that the warrantie should discende vpon him as his heyre. Note here of what validitie the intendement of Law is touching a ciuill death. The Wardein of the Fleete who hath the office in fee dyeth seised, and the office discendeth to his sonne and heire, being then in prison, the Law doth presently discharge him of imprisonment, because he is to be at large

u. 34.E.3. Garrantie 72.

large the better to looke to others, that be in
prison. w. A man maketh a lease to one for w. Plow. Com.
terme of life, rendring the first seauen yeares Plats. f. 37.
a rose, and if he will hold the land any longer
then seauen yeares, that then he shall pay foure
Marks yerely: liuerie is made, the lessee sur-
rendreth at the ende of the first seauen yeares,
his estate was adiudged to be but a terme *ab*
initio, and no freehold, and the writ of cou-
nant brought against him for not repayring
was *qui tenuit ad terminum annorum*. a. If a a. 50.E.3.27.
man make a lease of land excepting the trees
which grow vpon the land, the trees are seue-
red in law: for he hath no reuersion of them,
and if he sell them, and after the sale make
a feoffement, the feoffee shall not haue
them, because they were seuered by the ven-
dition or sale of them, b. for by the exception b. 20.H.6.22.
they were seuered from the terme, but not
from the inheritance, but by the vendition
they were seuered from the inheritance. If
the Baylife of the land doe demaunde a rent
seruice, and the tenant denyeth it, and the
Baylife sayth that hee will distraine for it,
and the tenant sayth that hee shall not dis-
trayne, wherefore the Baylife dare not pro-
ceede further to take a distresse, for doubt of
death, this is a disseysin of the rent in the
eye of the Lawe. c. And if a rent seruice be c. 49.E.3.14.
warranted to one, and the land doth escheat, Assise 66.

the

d. 45.E.3. Voucher 72. per Finchden.

the Law as *M. Finchden* thinketh transferreth the warrantie to the land.[d]

6 One thing in the vnderstanding of Law may be of seuerall natures in seuerall respects, and so one writ may be two seuerall writs to two seuerall intents: In an action of debt the declaration was of x.li. vpon a sale, and v.li. which he had deliuered to the defendant to redeliuer, and it was held good, because the action was in the *debet* and *detinet*, and the warrantie of atturney and the essoine in this case shall be *in placito debiti*.[e] Quere, If a man lease land to one for terme of yeares rendring rent, and the lessor graunteth his rent to a stranger, and the lessee surrendreth, this doth not extinguish the rent, for now it is a rent seek which doth not depend vpon the reuersion, [f] And so one man to the vnderstanding of Law may haue seuerall capacities or respects: For if a man disseise a feme sole, being an inheritrix of certaine land, and after he taketh her to wife, and they haue issue, and the husband is disseised, and the disseisor leuieth a fine with proclamations, the husband dyeth fower yeres after the proclamations, and before the fifth yere be passed, the issue being of full age, and after the wife dyeth, and the fifth yere passeth, now the issue is bound as heire to his father, yet he may haue other fiue yeres, as heire to his mother, to be accompted from the death of

e. 32.E.3.Brief 288.

f. 16.E.4.12.

his

his Father. g. So if I.S. be tenant of land, for terme of an other mans life, the remainder to an other for life, the remainder to the said I.S. for terme of his life, or in fee: and he is disseised, and the disseisor leuieth a fine with Proclamations, and the fiue yeares incurre, now is I.S. bound for the present estate, but if he in the meane remainder for life die, hee shall haue other fiue yeres for the other estate. g. Plow. Com. Stowels c. 367

h. So if a man haue an estate in land for the life of A. the reuersion to himselfe for the life of B. the remainder to himselfe for the life of C. and is disseised, and the disseisour leuieth a fine with Proclamations, he shal haue fiue yeares seuerally after euerie seuerall estate determined. h. Ibid.

i. I. S. giueth land to A. his daughter in taile, and hath issue B. another daughter, and dieth, A. dieth hauing issue C. a Precipe is brought against C. who voucheth to warrantie her selfe and B. as heires to the donour of the reuersion to haue the warrantie paramount, in this case is C. both the vouchor and the vouchee. i. Plow. Com. 368. Stow. cas.

k. A terme is deuised to one who is made executor, he entreth, this is an administration and an execution of the terme vnto him, and he is both deuisee and executor. k. 2. H. 6. 16.

l. A. couenanteth by Indenture with B. that the sonne of A. shal marrie the daughter of B. and that therefore B. shall giue vnto A. an 100. li. & if the marriage l. 20. Eli. Com Weldens cas

did not take effect before such a day that then A. and his heires should stand seised to the vse of B. and his heires vntill the hundred pound be payed by A. his heires or executours B. dyeth, and after the marriage taketh not effect, the vse and possession of the land vesteth in the heire of B. but Quære saith *Brooke* whether he shall be in ward or no, for he is an heire and yet he is a purchasor. [m] If I. S. be Deane of P. I may giue him land to him and his successours, and to him and to his heires, there hee taketh both as Deane and as a priuate man, and is tenant in common with himselfe: so if a rent charge be graunted in such manner, he shal ioine with himselfe in an Auowry. [n] Likewise the Lawe may deny one a benefite as he is I. S. and yet allow it vnto him as he is executor to I. N. and therefore if an executour be Outlawed, or Excommunicated, which be disabilities in Law: yet as an executour hee may maintaine an action, because he sueth and is to recouer to the vse of an other person. [o] and so an executour may haue an action of trespasse in his owne name, without naming his companion in the executorshippe, if goods be taken out of his possession. [p] For he is possessed of them as a priuate man, but he is possessed of them to the vse of an other as executour. [q] And he need not in the case aforesaid name, himselfe executour. [r] For if he do, it

m. 3. Mar. Br. Feff. al vses 59. & vide 3. Mar. 128. Dy. Wilf. cas & 13. E. 3. Br. Exting. 45.

n. 24. H. 8. 30. per Pollard

o. 14. H. 6. 14. 21. H. 6. 3

p. 42. E. 3. Executs 67.

q. 11. H. 6. 35

r. 12. R. 2. Executors 75.

it may tend to the abatement of the writ according to *M. Kebles* opinio. [s] who saith that the possession of one of the executors (his meaning is as he is executor) is the possession of both, and herewith agreeth the opinion of *Newton*, but by their fauors though the propertie of the executors in the goods of the testator be one and the same, yet the possession may be seueral, for he that hath the custody of goods may only be said to be in real and actual possession of the same, which kinde of possession is onely heare meant, for which cause a writ of Detinue that concerneth the possession of goods, shall bee brought only against that executor who is possest of the goods.

[s] 16.H.7.4. & Keble 19.H.6 65. per Newt.

7 [t]. The Law may worke seueral thinges in one instant as if a disseisor make a lease for yeres, and after he and the disseisee release, by one deed to the tenant for yeres, the Law aduogeth the release of the disseisor first to take effect, and after the release of the disseisee, for there is no priuity nor estate in the lessee, vpon which the release of the disseisee may inure, if the Law doe not make such construction. [u]

[t] 21.H.6.1.39 E.3.5 9.H.5.14 11.H.4.46

[u] 21.Eli. Com 539. Para. cas.

If the tenant for thirtie yeres make a lease for tenne yeares, and they both surrender to him in the reuersion, the surrender is good for both estates, and yet the lessee for tenne yeares, coulde not surrender by himselfe for defaulte of priuitie, but when the other ioineth

ioineth with him, his surrender shall bee taken to goe before and the other to followe it. w. Likewise if the tenaunt for terme of life surrender to the grauntee of the reuersion, this is both an Attournement and also a Surrender. a. So if a man haue land by discent by the Mother side, and leaseth it for yeares, the lessee couenanteth and grauntеth to pay yerely to the lessour and his heires xx. s. the lessor dyeth, the Law in a moment will conuey the reuersion, to the heire of the part of the Mother, and the twenty shillings to the heire of the Fathers side, because it is a sume in grosse. b.

w. 14.H.7.1. & 4.

a. 19. Eliz. 258. Dyer.

b. Plow. Com 132. Brow. cas

8 By intendement and admittance of Law a thing suspended may bee reuiued, for if the donour disseise the donee in taile, and after maketh a feoffement, and the tenant in taile reentreth, nowe the feoffee shall haue the reuersion. c. So if the heire in taile entreth vpon the discontinuee, and maketh a feoffement vpon condition, and for the condition broken reentreth, and after a recouerie is had by the discontinuee, the issue in taile is now restored to his first action, and the entaile is reuiued, for by the breach of the condition the feoffement is disanulled. d. Tenant for life, the remainder in taile, the remainder in fee to the heires of the tenant for terme of life, graunteth a rent charge in fee, this shall

c. 9.H.7.25. per Fineux

d. 23.H.8 Br. Restore al primer acc' 5.

charge

charge the land during his life, but it shall be suspended during the entaile, and after the entaile determined it shall be reuiued, and shall charge the heire of the tenant for life. [c.] c. 5.E.4.24.

9 The Law altereth the nature or substance of a thing by matter, *ex post facto*, A man seised of lande in right of his wife, entreth into religion, the wife alieneth, the husbande is deraigned, the husband may reenter into the land. [f.] So if a man bee indebted to a villaine, who recouereth in an action of debt, and after the debtour purchaseth the manner to which the villain is regardant, and after alieneth it, the villaine may nowe haue execution. [g.] If a man make a lease for terme of an other mans life rendring rent, and the arrerages incurre, the lessor shall not haue an action of debt, because he hath a franktenement in the rent, but if Cesty que vie die, now is the freehold as to the rent conuerted into a chattell, and nowe he shall haue an action of debt. [h.] Likewise a deuorce altereth the estate of frankemariage into a bare freehoold. [i.] If a man adde a condition to a single Obligation after the deliuery, this maketh the Obligation void, for now it is not his deed, and the same Law is of the rasing or enterlining of a condition after the deliuery of the Obligation. [k.] If land bee giuen to one in taile, and the donee giueth the land to the donour,

f. 33.E.3.Entr congeable 52.

g. 12.H.4.Execuc' 28.

h. 39.H.6.26. per Paston

i. 7.H.4.16.

k. 36.H.6.5 per Ash.Iust.

and to a straunger for terme of their liues, this is a discontinuance conditionall, namely if the straunger suruiue. l. If the Sheriffe attache one by force of a Capias that is iustifiable, but if hee returne a Non est inuentus vpon the writ, he is a trespassour ab initio. m. If I. disseise I. S. and leuie a fine to I. N. and after I. S. entreth vpon I. N. and enfeoffeth me, and I. N. entreth vpon me, and I bring my Assise, and I. N. pleadeth the fine in barre, I may auoide the fine by shewing the matter aforesaid. n. If a fine be leuyed of lands in auncient demesne, and the Lord disanulleth the fine leuied at the Common Lawe, he hath restored the right to him that leuied the fine. o. If hee which abateth after the death of the tenant in fee simple make a Feoffement vpon condition to be performed within nine yeres ensuing, and after the feoffee leuieth a fine with Proclamations, and the fiue yeares incurre the condition is broken, and the abator reentreth, now the heire of him that dyed seysed may haue an Assise of Mordauncestor against the abator, whereas before hee was bounde by the fine. p. Tenant in tayle maketh a Feoffement and taketh backe an estate in fee, and bindeth himselfe in statute Marchant, and then maketh a Feoffement vpon condition, and after the recognisance is put in execution, and the tenant

l, 28.H.8.7 Dy.per Fitzh.

m. 3.H.7.11

n. 15.E.4.5 per Litt

o. 16.E.2. cont claime 10

p. Plow. Com 358.b Sto.cas.

in

in taile dyeth, and the heire in taile being within age entreth for the condition broken, he is remitted, and the recognisans auoided, but otherwise it had bin if he had bin of full age: for then he comming in vnder the Estoppell should not haue auoided the Estoppel, nor by consequence the recognisans. q. If my very tenant be seised of a Manor held of the King in Capite, and of an other Manor held of me by knightes seruice, and he is disseised of the Mannor holde of the King, and afterward dyeth seised of the Manor held of mee, whereupon I seise the body of the heire, and after the heire within age recouereth the Mannor held of the King, nowe the King may haue my lande also in Warde, because the heire shall nowe be adiudged to bee in by discent, and the King shall haue the Wardeshippe of the body. r. If my Horse strike one, and after I sell the Horse, and afterwarde the partye that was stroken, dyeth of the stroke, nowe shall the Horse be forfayted as a Deodand. s. If a villaine inflicte vpon himselfe a mortall wounde, and the Lorde seyseth his goods, and then the Villaine dyeth, nowe shall the Queene haue his goods because hee is Felo de se. t. A man administreth of his owne wrong, and after taketh letters of Administration of the Ordinarie, this shall relate to the death of the intestate.

q. 8.H.7.7.

r. 15.E.4.14 per Littleton Skreenes cas

s. Com 290. p Car. dame Hales. cas

t. Ibid'

v. 9.E.4.33.
w. 10.H.7.
Charge 3.

v. the heire chargeth land which is after recouered in a writ of Dower, the woman shal holde it discharged. w. Thus it is euident that the vnderstanding of the Lawe worketh especially vpon relations on the first causes of thinges reducing through many straites of colourable pretenses and obiections the right of a thing to him to whom it appertaineth, according to the qualitie and exigence of the said right and title, so that the vnderstanding of the Student when it entreth into the suruey of these intricate and hidden pointes, must bee of this abilitie to compound thinges, and to resolue them by imagination, to builde and destroy, and to turne sayle by circumstances and occurrences: for there is no case which accidents may not alter, but that one thing may counteruaile an other, or that a defect may be supplied by enforcement of reason, or that a wrong may bee purged and transformed into right, and blacke as it were changed into white, contrary to nature is the worke of intelligence reflecting vpon it selfe, some perhaps carry such spiced and scrupulus consciences, that they cannot abide any fiction or representation of a thing that is not *in facto*, but surely the supposall admittance and intendement of the Law is necessarie, without which neither the science of the Law, nor any other which consist in con-

contemplation and abstraction of the essences of things from the confusion and mixture of circumstances can be of any worth or force. And though I must confesse that every thing, which is imagined to be done, and is not actually done is a phantasie, or an untruth, yet this must be graunted, that, that which is not really done, and yet for auoyding inconuenience must be supposed to be done *in facto* is not a fault, though it be false. Many things of this kind & qualitie haue I before immediat hypopoſed which will be voide of all effect, if you take imagination from the Law: Let it therefore be considered what this imagination is whereof we speak, that by the description thereof it may be better knowen. It may thus appeare vnto vs, *Fictio* a supposall or admittance of a thing to be is, *legis aduersus veritatem in re possibili ex iusta causa dispositio*, the disposing of the Law against a matter of truth in a thing that is possible, grounded vpon iust cause: and there is great difference betwixt imagination and presumption, because *fictio iuris* the imagination of law *tantum operatur quantum veritas ipsa*, in the conclusions and decisions of law, and the Law maketh sometime *ens ex non ente* in intelligence, though not in existence: but *præsumptio stat in dubio* it is doubted of, and yet it is accompted *veritatis comes*,

the

the companion of trueth, *quatenus in contrarium nulla est probatio*: And the vse of supposall or fiction in the Law is onely to supplie that *quod desideratur in facto*, which is wanting in fact, *vt ex ipsa producantur veri iuris effectus*, that true effectes and conclusions of law may proceede from it. The *Logicians* say that the vniuersals are not *in rerum natura*, for if they were they should be *monstra*: for an vniuersall man, or an vniuersall tree comprehending in it all trees, is rather by vnderstanding to be comprehended then by sense to be compassed; yet I would not haue any imagination to be vsed: but where Equitie and the orderly coherence of thinges doth require it.

That

That the Student ought well to conceiue the reason and Iustice of the Law in distinguishing *and establishing the propertie and communitie of thinges.*

The seauenth Chapter.

THe ende and effect of the Law is to settle the propertie and right of thinges in them to whom they belong: And to iudge those things common which continuance of time and the entercourse of parties hath distributed & warranted to many, for if all thinges should be common, there should be nothing in order, and if nothing should be common, men would hardly be kept in duitie, for then should friendship, societie, and conuersation, the comforts of mankind faile, which would turne the whole common weale into a wildernes: therfore the most prudent and politike Law-makers haue thought it most conuenient, that betwixt these two extremities a middle & euen course should be taken, whereby propertie myght be reteigned, and yet communitie preserued.

Plato,

Plato, because once he was of opinion that all thinges ought to be common, hath therefore many blowes of his scholler *Aristotle* writing against him in hys Politikes, in which booke he hath a learned difference, that all that be common κοινὰ in vse but not ἴδια in possession and title, which notwithstanding is not generally and indefinitely to be admitted, because then it tendeth to the ouerthrow and vtter subuersion of all common weales: But *Plato* being after better aduised did retractate his former opinion, and laboureth to confute it: for in his book of Lawes he writeth in one place, Let euery man haue the free vse and possession of his goodes by law, whether he be citizen or stranger,[a] and in an other place: The distinction of demeanes, inheritances, and titles, is the foundation of all priuate contractes, which must be seuerely established by Law: therefore *meum* and *tuum* ought to be in euery common weale.[b] And againe, Let the inheritances and properties of thinges be definite and certaine in euery common weale, and let a certaine manner of purchasing them be prescribed by Law.[c] Thus it is euident that a distinct propertie of thinges is commodious and conuenient for the good administration of a common weale: It is of two sortes, either an absolute and indefeasible propertie, or els a quali-

a. Plat. lib. 8. de legib.

b. Plat. lib. 11. de legib.

c. Plat. lib. 12. de ligib.

poorly 2 fold

qualified propertie and *sub modo*. An absolute propertie is such which is not in any sort subiect to the claime of any other: but a qualified propertie is that, which one man may claime after one sort, and with a certaine limitation, and an other may claime after an other maner, and without limitation: As if a man doe hyre beastes of an other to manure his land for a certaine tearme, hee that hyreth them hath a propertie in the beasts *pro tempore*, and therefore if the beastes during the tearme be taken away, he may haue a generall Repleuine: [d] So he may haue of beastes which bee in his custodie and were committed to his keeping: [e] And so he may haue a generall writ of Trespasse for the taking or dryueing away of beastes in his custodie, though the absolute propertie bee in an other man: But if hee which hath the verie propertie doth take them, an action of the case will onely lye. [f] And the Bailie of corne or money, being out of sacke or bagge, hath so farre forth a propertie in the thinge deliuered, that if the Bailie be afterward attainted of felonie, he shall forfait the corne and the money: for it cannot be knowen whether they be mine or no. [g] And the Lord may haue a Repleuine of the beastes of hys villaine, or bondman, if hee haue bin seised of

d. 42.E.3.18. 11.H.4.17. 17.E.4.2.

e. 47.E.3.12.

f. 48.E.3.20. 11.H.4.23.

g. 3.E.3.Corone 317. 323. 334.

his

his villaine.[h] And it appeareth by diuerse bookes, that in an action of tresPas, it is no plea to say that the propertie, that is the verie propertie, is in an other.[i] And it is sayd lykewisé, that hee out of whose possession goodes are stolne, may haue an Appeal: and he lykewise may haue an Appeal who is the verie proprietarie.[k] And therefore it is a firme conclusion in law, that if sheepe be deliuered, or leased to one for a certaine time to marle his ground, the deliuerie or demise is a good plea in barre of an action of Trespasse, or Repleuine, because hee hath a propertie *modo et forma* against the bayloz himselfe, or lessour, and may haue an action against him for taking them away wythin the time.[l]

h. 42.E.3.18. Na.br. Fitz.69. 9.H.6.25. per Bab.

i. 19.E.3. Repleuin 32. 33.E.3.Rep.43

i. 12.H.6.19. 27.H.8.21.

k. 19.E.3.Repleuin 32.

l. 21.H.7.14.

2 And as the propertie of thinges may be particuler or generall, so likewise it may be ioint or seuerall: A ioint propertie is where two or moze are ioyntly interessed in a thing: A seuerall propertie when they haue seuerall interestes in seuerall thinges: and therefore where the propertie or right in goodes and chattels is ioint, there the action which is brought to trie the propertie must not bee seuerall: And therefore in a writte of Rauishment of a warde the defendant sayd that the plaintife had nothing in the seygniorie

nioxie but onely in common wyth such a one, and this was helde a good plea, wythout saying that hee had nothing in the warde in seueraltie, oz wythout shewing how hee helde in common in parcenarie, oz by iointenauncie.[m] And so if the pzopertie bee seuerall, the action must not be ioint but seuerall: And therefoze if in a wzitte of Repleuine bzought by two foz certaine beastes, if the pzopertie of some of the beastes belong to one of them onely, and the pzopertie of some of the beastes to the other, the wzitte shall abate.[n] Thus it is euident that the Lawe doth maintayne and vpholde the iopnt and seuerall pzopertie of thinges, without which the common weale could not consist. Now let vs consider how the communitie of thinges is lykewise respected by Law.

m. 6.H.4.6. 12.H.6.4. 22.H.6.14.& 1.E.4.7.

n. 28.E.3.92. 3.H.4.12. 34.H.6.37. 2.E.4.23. 10.E.4.2. 8.E.3.15.

3 A man may obserue and deduce hys accompt from foxmer times, that it hath bin thought bery necessarie and conuenient that mutuall commerce and trafique betwixt Nation and Nation should be entertayned & continued:[o] And therefoze *Plato* wisely admonisheth, *peregrinorum commercia respub. né auersetur*: And *Amasis* the Egyptian king was so glad

o. Plat. lib. 12. de legib.

glad of the commerce and resort of strangers, that he graunted to the Grecian merchants beeing meere aliens, the vse and exercise of their rites and religion in their owne language: And to the ende that strangers might more commodiously practise their negociation in that Realme, there was a certaine place appointed in that kingdome, namely *Naucrate* for the receit of forraine wares, p which course is greatly approoued by *Aristotle*, whose opinion is, that a principall Citie must be erected in some conuenient place whereto thinges which be necessarie to thys lyfe may bee abundantly conueyed, and to which there may bee easie passing for them that be in league w,th vs, and hard for others: q and therefore sayth he it ought to be scituate neere to the sea. r And doubtles iust was the quarrell and complaint of the people of *Megara* against the *Athenians*, who had vterly barred and secluded them from theyr hauens, and from all marting wyth them: s for he whych breaketh and dissolueth the reciprocall entercourse of nations, is an enimie to the societie of mankind. And *Strabo* in hys last booke noteth it as the propertie of the *Barbarians*, to repulse and keepe out of theyr territories all straungers, which custome is agaynst the Lawe of Nations, what

p. Herodot. lib. 2.

q. Arist. 5. polit. cap. 7. 6. polit. ca. 7. et lib. 7. ca. 4. et 5.

r. 7. polit. cap. 5.

s. Plutarch. in Peric.

what a great point of inhumanitie is it to deny them the sea which by nature is open to all: t yea, it ought to be as common as the vse of the aire: u. and all creatures may claime the free vse of that, as may appeare by that saying of *Dædalus*:

t. Vlpian. lib. 8. Digestor. tit. 4. c. 14.

u. Celsus li. 43. Digestor. tit. 8. c. 3.

Omnia possideat, non possidet aera Minos. w.

Though Minos all things do possesse,
the aire is not his owne.

w. Ouid. in Metamorph.

And the shore of the sea is by nature common to all, as *Neratius* sayth, a. and though Empires and kingdomes be deuided, yet the vse of such things remaineth still in common, and therefore the saying of *Maro* in the person of one of his trauellers was vttered with good reason:

a. c. 14. tit. Digestor. de acquirend. rerum dominj.

Quod genus hoc hominũ, quæue hunc tam barbara morem
permittit patria? hospitio prohibemur arenæ.

but yet to enimies, because in them the league of friendship doth faile, the right of fellowship should not be graunted. For grossely are they deceiued, who would without restraint haue all things common, of which error the Anabaptists are patrons, and do endeuour to ground their error vpon scripture, but falsely, for *Abraham* and the Patriarches were men of great riches: *Iosua* did publikely and priuately distribute his goodes to the people of

Israell. There be in *Solomon* precepts of the proprietie of things. And God woulde not haue sayd, Thou shalt not steale, if he would haue had all things common: for to steale, is to take away goods wherein others haue a propertie, and therefore theft is sayd to bee *contrectatio rei alienæ animo furandi, inuito illo cuius illa res est.* [b]

b. Stamford. fol. 24.

3 But yet the rule of charitie and societie requireth that some things should bee in regarde of vse and benefit common to other, and therefore by customes of Countryes, and by lawe, the offspring of these customes, the earth is in parte appropriated vnto some, and in parte participated and made common to others. Therefore the Common lawe doth well allowe and mainteine the common vse of certaine things, as namely, the vse of Fishing in another mans Pond, [c] of pasture for hys beasts in an other mans soyle, [d] of taking of an estouer or maintenance of wood in another mans groue, [e] of hauing a franchise and libertie in an other mans Mannor or Seignorie, [f] and lastly, of hauing a way through an other mans ground. [g]

c. 18.H.6.29. & 92.17.E.4.7.7. H.7.13.18. E.4.4.
d. 9.H.6.36.27. H.6.10.15.E.3. Common.12.22. Assis. pl. 36.36. Assis.pl.3.4.H.6. 13.37.H.6.34. 4.E.4.29.10.E.3. 15.10.E.3.56.4. E.3.4.15. Assis. pl.5.14.E.3. Barre.277.17. E.2.Commō.23. 22.H.6.51.
e. N.B. Quod permit.11.Elizab. 281.Dy.
f. 13.E.45.10. H.7.13.7.E.4. 10.48.E.3.17. 30.E.3.20.3. H.6.12.34.H.6. 43.
g. 33.H.6.26.8. E.4.9.6.E.3.23. 2.E.4.9.20.E.3. Admeas. 8.21. E.3.2.11.H.4. 82.2.H.4.11.

4 Some thinges there are, the propertie whereof the lawe can not vest in any, and therefore it leaueth them to the occupant, that is in playne tearmes to hym that can seise

seise them, as things which are by nature *feræ naturæ*, as beasts, birds, or fishes, being in their owne libertie. And as to the propertie it is not materiall whether they bee taken in a mans owne ground, or in an other mans, and such things be his no longer then they bee in his possession or custodye: for when they haue escaped and recouered their naturall and pristinate libertye, then they cease to be his, but then the lawe vnderstandeth such things to haue recouered their naturall libertie, when they are eyther past the view, or els being in view they be hard to be followed, and recouered. The nature of Bees is wilde, and therefore when a swarme of them lighteth vpō thy tree, they are no more thine before they be couered with thy hiue, [h] then hawkes, which haue made their neasts in some of thy trees, or doues in thy doue-house for though the yong birds be thine, whereof thou mayest bring an action of trespasse, *quare vi & armis pullos esperueriorum suorum in bosco indificantium*, or *columbas columbaris sui cæpit*, which writ is not only maintenable, whē the doue-house is broken or the doore open, and the young doues be taken out of their neasses, but an action of trespas wil also lye for ỹ troubling or hurting of the old doues within the doue-house, though they be *feræ naturæ*, as wel as for chasing & killing conies in a mans warren, [i]

h. Iustinian. lib. Institut. 2.

i. 16.E.4.7.22. H.6.6.67.18. E.4.8.

yet he shall not vse this word *suos*, [k] in his writ, yet because he hath them by reason of his Warren or Doue-house wherein he hath a propertie, he shall haue an action for the chasing or the taking of them. [l] The nature of Cranes and Doues is wilde: neyther is it materiall that by custome they are wont *anolare & reuolare*, to flye from home, and returne home. And in such things which are tame, and by custome are wont to depart and yet to returne, this rule is allowed, that so long they may be sayd to be thine, as they haue *animum reuertendi*. And felonie cannot be committed in the taking of beasts that be sauage, if they be sauage and vntamed at the time of the taking, nor for taking of Doues being out of a Douecoate, nor for taking of Fishes being at large in the riuer, for such taking is not *contrectatio rei alienæ sed quæ est nullius in bonis*. [m] And the stealing of a Doe which is tame and domesticall is felonie, but then saith *M. Stamford*, it seemeth that hee that stealeth it should haue certaine knowledge that it is tame [n] but if the Doe be killed and then stolne, this is felonie. [o] And though a man may haue for the taking of his Ferret an action of trespasse, because hee is profitable to take Connies for the vse of his maister. Yet because a Ferret is *feræ naturæ*, a man cannot haue an appeale of felonie for him

k. 43.E.3.24. 12.H.8. per Newdig. 14.Eliz.307. Dy.

l. 8.E.4.5. 22.H.6.55. N.B. Fitzh. en le briefe de trespasse.

m. 18.H.8.2. 22.Assis.pl.95.

n. Stamf. lib.1. c.16.

o. 10.E.4.15.

him, no more then he may haue for the stea-ling of his Hauke and Popiniay, or such like, for such things are *feræ naturæ*, and a man can haue no propertie in them, neither can he say in his writ *feras suas*, for that implyeth a contradiction, and because they are sauage, therefore they are not tithable. But when such things are made tame by my labour and cost, the propertie of them is changed, and the nature altered, and then if a man take them out of my possession, I may haue an action. For a man may haue an action *quare molossum suum cepit*, because he is necessarie for the kee-ping of his house, or the keeping of his folde or a fish-pond. p. But the nature of hennes and geese is not sauage, and therefore if they shall flye away, though they be past thine eye-sight, notwithstanding in what place so euer they be, they cease not to be thine: and who so e-uer deteyneth them, is punishable by way of action. q.

p. 12.H.8.3. Fillowes C. per Brooke. Pollarde. Brudnell. Newport & Newdigate.

q. Iustini. lib. Institution. 2.

4 In the Ciuill lawe there is this case, certaine Sheepe were caried away from the Shepherd of A. by Wolfes, an husbandman of the next village hauing pursued them with great and strong dogs which he kept for the safetie of his beasts, recouered them from the Wolfes, for the dogs did enforce the Wolfes to leaue them, and when A. did demaund the Sheepe, the question was whether the sheepe

became his that did so recouer them, or remained still the sheepe of A, for the dogs did get them by a kinde of hunting: yet *Pomponius* thought in this case, that as those things which are taken either on sea, or on land, do cease to be theirs that tooke them, when they are come to their naturall libertie, so by the same reason our goods takē away with beasts liuing either in the sea, or on the land, do cease to be ours whē the beasts that tooke them haue escaped our pursuit. And who will affirme that that continueth to be ours which a bird flying hither and thether, carieth out of our barne, or out of our field, or by any meanes carieth it away from vs, if therefore it cease to be ours when it commeth to the mouthes of beasts, in common apperance, irrecuperably, it must needs become his who first recouereth it, and so be made proper to the occupant, euen as a fish, or bird, which hath escaped our power, if it be taken of an other, is streightway his, but he thinketh it more reasonable that it should continue ours, so long as it may be recouered. r.

r. Vlpianus lib. 19. ad edictum.

5 Likewise a thing *pro derelicto habita*, waiued & forsaken, is *nullius in bonis*, as when a man for feare of a tempest casteth his things into the sea, or some danger being imminent, leaueth them vpon the land, or els of his owne free will leaueth that which is his owne *sine*

spe

spe rehabendi. s. If a thing be fallen out of a chariot or wagon, it may be sayd to be lost or waiued. t. And if a man haue a libertie to take wayses and strayes in his mannor by prescription, and certaine beasts be wayued or do stray within the precincts of his mannor, and a stranger taketh them, he that hath the mannor shall not haue an action of trespasse generall for the taking of them before he hath seised them, u. though the lawe be taken to be otherwise by some. w. But 13. E. 3. a writ was maintained by an Abbot by reason of his franchise in the like case, but that was an action vpon the case, which proueth that the propertie was not in him before seisure. x. But it hath been held for cleare lawe, that felonie is not committed in the taking of treasurie found, wreck of the sea, wayse and stray, and such like, vnlesse they haue been before seised, and the reason is, *quia dominus rerum non apparet, ideo cuius sunt incertum est*, and therefore the punishment in such cases is by fine, and not by the taking away of life and member. y. Such landes, the propertie whereof hath been executed by possession, cannot be wayued but by matter of record. z. And it is a certaine rule and sound reason, that such things as cannot passe but by matter of record, cannot be wayued or relinquished, but by matter of record. *.

s. 29. E. 3. 29. 12. E. 4. 5.

t. Vlpia. lib. 56. ad edictum.

u. 16. Elizab. 138. Dy.

w. ibid. & Fitzh. N. B. 19.

x. 13. E. 3. Briefe 678.

y. 22. Assis. pl. 99.

z. 7. E. 4. 7. & 20.

*. 8. H. 4. 13.

6 Such things are said to be *nullius in bonis*, which haue not from time out of minde bin knowne to belong to any man, as treasures hid in the earth, as when any money, gold, siluer, plate bullion is founde in any place, and no man knoweth in whome the propertie is. The lawe bestoweth it vpon the King, and it becommeth *res fiscalis*, parcell of the treasurie royall, and therefore it is called in the common lawe *treasure trouue*, that is to say, treasure found, whereby it appeareth, that the King is not proprietarie of it, till it be founde, but it is before *nullius in bonis*. But if any mine of mettall be found in any ground, that alway pertaineth to the Lord of the soyle, except it be a mine of gold or siluer, or a mine which hath vaines of gold and siluer, which shall alway be the Kings in whose ground soeuer they be found: [a] and in auncient time, as *M. Bracton* sayth, it belonged by the lawe of nature to him that found it: but now by the lawe of nations it is *res fisci*, and belongeth to the King: but heretofore it hath bene ruled *quod thesaurus non competit regi, nisi quando nemo scit quis abscondit thesaurum*: [b] for then (as *M. Stamford* collecteth) it shall belong to him in whom the propertie was before, and if he dye before such finding, his executors shall haue it. [c] And because there might befall some square or variance

a. Exposit. des tearmes de ley, Plowd. in le case de informat. pur mines.

b. Fitzh. corone 446.

c. Stamf. lib. 1. cap. 42.

riance betwixt the Lord of the soyle, and the King about the propertie of such treasure, it is therefore decided *quod thesaurus competit domino regi & non domino libertatis si non sit per verba specialia aut per præscriptionem.* d.

d. Firzh. corone 281. 436.

7 And things are sayde to bee *nullius in bonis* by common consent, as things consecrate and religious: for though the goods belonging to a Church, as belles, seruicebookes, surplices, chalices, and other things, must be supposed in a writ of trespasse brought by the Churchwardens to be *bona parochianorum in custodia nostra existentium.* e. Yet in that the lawe giueth the action to the Churchwardens, and to their successors, for the recouerie of such goods vniustly taken, and doth giue the propertie to the parishioners, this properlie must be intended to be to the vse of the church, that is, to the vse of the parochians, as they are the Church: for though it be true that *Rolfe* sayth, 8.H.5. that a church parochiall can not otherwise be intended, but a house made of stones, and walles, and roofe, and such materiall things which can not take by gift or feoffment no more then a church conuentuall which lacketh a soueraigne: f. yet it cannot bee denyed that the parishioners are incorporate for the purchasing of personall thinges, and that in regarde of such

e. 8.E.4.6.37. H.6. 30.12.H.7. 27.8.H.5.4.11. H.4.12.19.H.6. 66.

f. 8.H.5.4.

such capacitie, they may be sayde to be the Church it selfe, as well as the Parson and his successors in auncient time were sayd to be the Church in the purchase of land and realties, which may appeare by this case: Land was deuised to one for life, the remainder to an other for tearme of life, the remainder to the Church of S. Andrew in Holburne, this is adiudged to be a good deuise, g. and this must needes goe to the Parson and hys successors, because the Churchwardens and parishioners were neuer admitted by lawe to purchase land to the vse of the Church. And *Belknappe* sayde, that the cloathes of a dead man being found dead in the field, did belong to hys executors if hee had made a will, otherwise that they should be deliuered to the Church for celebration of diuine seruice for the soule of the dead: for his meaning is (as I take it) that the Ordinarie should intermeddle with them for the disposing of them. h. And if a man take a coate-armor which hangeth ouer a dead mans tombe in a Church, the enditement must be *bona executorum*, of the dead man: but if a graue-stone be taken away, the enditement must be *bona ecclesiæ*. i.

g. 21. R. 2. Deuis. 37.

h. 48. E. 3. Enditement, 27.

i. Lambard Eirenarc, 494. 495.

That

That the words or termes vsed in bookes of lawe ought *to be vnderstoode and applied* as the lawe doth expound and conceiue them.

The eight Chapter.

IT is not possible for a man to be skilfull in any Science, vnlesse he do perfitly know the words which do occurre and are often vsed in that Science. I doe not meane words of Arte onely, which by Lexicons and explanatorie bookes may easily be conceiued, but such as do import and concerne the obiects of the science, about which it is principally conuersant. To pursue therefore briefely an interpretation of such words as in the lawe are materiall, I take it not to be dissonant from order to begin with the diuersitie of lawes, and to shew how these words, the lawe of Nature, the lawe of Nations, the lawe Ciuil, the common lawe, the statute law, the customarie law *ius merum*, and *æquum et bonum*, are vsed in the lawe bookes, and are to be vnderstood, that so it may be knowne how and in what sort one lawe differeth from an other, and of what qualitie

diuersity of lawes explained

qualitie and condition that lawe is to which the Student is addicted, or vpon which hee doth grounde his reason. The lawe of Nature therefore is that, which the Nature of Natures, or the God of Natures of the Philosophers called *Natura Naturans*, hath taught all creatures that haue sense by the mediation of nature created of which they consist: for this lawe is grounded in the roote and inwarde partes of Nature, and therefore one sayeth well, *Habemus non scriptam sed natam legem, quam non didicimus sed hausimus*: This is according to *Iustinian* his definition, in hys Institutes, to whom *D. Hotoman* may seeme at the first to doe iniurie by obiecting that by this definition, to eate, to sleepe, to moue, and to rest, are parcell of the lawe of nature: and though this be aunswered by some, [a] that these thinges are excluded from the definition, by this word *ius*, yet what absurditie woulde followe if such thinges shoulde bee graunted to bee parcell of the lawe of Nature, why not as well as the repulsing of force, which apparantly proceedeth from the lawe of Nature. For in truth there is no difference in the effect betwixt externall force, and the force whiche a liuing creature hauing sense should doe to it selfe, if

[a] Gou. lib. 1. lect. iur. c. 19.

if it ſhoulde not perfoꝛme theſe afoꝛeſayde actions of Nature, as to eate, to ſleepe, to mooue, and to reſt, whereby Nature is pꝛeſerued and kept in time. This is playne in men, who by the Ciuill lawe are ſayde to kill, in denying nouriſhment to themſelues, oꝛ others, whereby life and nature may be mayntayned. And *Ioſephus* wꝛiteth well, that it is againſt the nature of liuing creatures foꝛ any of them to kill it ſelfe. b. But *D. Hotom.* doth further cauill, following hys foꝛefather *Valla*, that lawe cannot bee applyed to beaſtes, no moꝛe then iniurie may be done vnto them. To this may be replyed, that iniurie in ſome ſenſe may be done vnto them, if iniurie be taken foꝛ that *quod iure non fit*, which is not done accoꝛding to that lawe, that is pꝛeſcribed vnto them by nature. But if it bee done accoꝛding to the rule of nature, though it diffeꝛ from the nature of all other things, yet it is not iniurious oꝛ vnnaturall, foꝛ example. All birds except the Cuckoe, doe foſter and bꝛing vp theyꝛ young, theſe doe it by the lawe of Nature, this doth it not by the lawe of Nature, and yet doth no iniurie to her young, becauſe ſhee doth it by the inſtinct and pꝛiuiledge of Nature. This lawe is of all moſt auncient, beeing con-

b. Ioſeph. de bel. Iud. lib. 3.

naturall

naturall vnto vs, and following immediatly and indissolubly, the very principles of Nature created, being an euen leuill, and most iust lawe in it selfe, though wrested and corrupted by the corruption of things: but in what kinde so euer it is vniformely executed, it is without all blemish of vniustice, as in mankinde it is vniformely apparant, that euery man is inclined by nature to prouide for posteritie. But when some prouide too much, some too little, some with pinching from themselues, some in seeking to make their children farre greater then themselues, this is not vniforme, this therefore is vniust: neyther doe I dissent from the opinion of them that thinke the lawes of *Moses* doe imitate and resemble the simplicitie, integritie, and vniformitie of the lawe of Nature.

For nations Law of Nations — not

The lawe of Nations is that which naturall reason hath propounded and appointed in common to all men: I doe not saye that nature hath appoynted, but nature with reason, or naturall reason. And it is also seuered from the lawe of nature, because it is appropriated onely to men, yet communicated to all nations, for there is no nation which vseth it not. The distinguishing of Demeslues, the diuersitie of Realmes and King-

Ius Gentium. est.

Quod naturalis Ratio inter Omnes Homines constituit, id apud omnes perœque custoditur. I.1.2.1.

Kingdomes is parcell of the lawe of Nations. Likewise warres, contracts, and such like, are braunches of that lawe, the definition of it may be shortly this, a lawe in which all Nations doe consent. But this pleaseth not *Bodinus*, for saith he, all nations haue consented to Idolatry, yet who will accompt that a lawe? [c] But this definition is meant of humaine things, not of diuine, for who will so vnderstand it? For all the Nations of the world may not prescribe a lawe to God, nor capitulate any thing touching these thinges that concerne him, hee is a law-maker for hymselfe, and therefore hath sayde *Quod præcipio tibi hoc tantum facito, non addas, nec minuas.* [d] But in humane things that whiche all Nations doe allowe for a lawe that is for gouernment and publique respect (for which intent the worde lawe is vsed in the definition) that is to be receyued and acknowledged for the lawe of Nations.

c. Bodin. lib. de Repub.

d. Deuter. 12. v. 32

The lawe Ciuill I doe not take so largely as some doe interpret it, to bee a lawe which euery citie or people hath appropriated to it selfe: for though the originall denomination of it came from this word Citie, yet by that was meant onely one Citie where that lawe was practised and obserued, and

Sex civilis Civil Lawe

Ius mihi est. . .
Quod quisq; populus sibi constituit.
I. 1. 2. 1.

and that was the auncient citie of *Rome*, for which cause the Ciuil law is at this day called by some *ius Romanum*. [e] And though many Cities and Commonweales be now gouerned by that lawe, yet therefore it can not be sayde to be *ius Ciuile*, sith it had the name before.

e. Alber. Gentil. lib. lecti. & epistolar. 2. c. 14.

The Common lawe is that which by common vse or common reason is made, not by common assemblie, as Statutes or Actes of Parliament are established: And it differeth likewise from statute lawes in this, that in such lawes there are many times prouisoes and exceptions of certaine persons. But the Common lawe bindeth all alike, and is not applyed and vsed as a plaister to one part, but as a strong purgation to all the partes of the bodie politique, and it may challenge a thirde difference, for that the Common lawe ariseth from the people and multitude, but the Statute originally from the King, because before euery Parliament, writs of summons issue from the King for preparation to that solemne meeting of the States. Againe, the King may dispense with penall Statutes, [f] by clause of *non obstante*, but hee may not alter the course of the Common lawe, [g] though the worde of Common lawe extende by the generallitie of it, to any lawe

f. 34. H. 8. 52. Dy.

g. 11. H. 4. 73.

lawe that is commonly vsed in any place, yet vse hath restreigned it to the Law of this realme of England, to the dominions of which it is confined, & beyond this neast streatcheth not her feathers.

The customary Law is nothing els but a custome long time continued, which may bee thus moze fully defined, Custome is a law not written, by the manners and vsage of a certain people oz the greater part of them vpon good reason and iudgement, begun, and continued, and hauing the fozce of a Law. I said (a Law not written) because the bare memozy of man is the regiſter of customes. I said by the manners and vsage &c.) because no custome doth grow without the consent of certains people oz the maioz part of them. I said (begunne vpon good reason and iudgement) because such things as are introduced by erroz, are not to be obserued. I said (continued) because without diuturnitie of time, custome can haue no fozce oz strength. I said (hauing the fozce of Law) because it must bee of equall power in the place where it is vsed with the Law. A custome against the Law of nature is of no fozce, because *naturalia sunt immutabilia*; A custome against the Law of nations is of no validitie, because that is grounded vpon the Law of nature. A custome against the Law positiue is either against publike vtilitie oz priuate

Lex Customaria

prafit, if it be derogatorie to publike vtilitie, it is void: if it be onely against priuate profit it is good and effectual, and a custome once disallowed and defeated by Law, cannot be recontinued or reuiued by any meanes. It hath bin questioned how many Actes or deedes of men be required to bring in a custome, and the opinion of the most learned hath bin, that so many actes and so notorious, that the thing which is done may be intimated into the notice of the people, so that it may seeme to be allowed by the secrete consent or likeing of the people. But one notorious act cannot induce a custome, for that is against the name of a custõe: for *consuetudo* is nothing els but *communis assuetudo*. It hath bin also doubted whether an act contrarie to a custome do interrupt the custome, to which it may be thus answered, either the custome was not yet perfitte, and then it doth interrupt the custome, for the consent of the people did not yet euidently appeare, or els it was complete and perfit, and then it cannot be defeated by one act, but by so much time and in such maner as it was induced.

Ius merum is that Law which hath no mixture nor regarde of circumstances, but groundeth a rigorous conclusion vpon thinges done without further examination how or why they were done, as if a man sell a lease of lande

for yeres, and certaine cloth for tenne pound, the contract is entier, and if the title of the vendor be not good as to the leafe, yet he fhall haue the entire fumme though the vendee be diſpoſſeſſed of the leafe at the time of the action brought for the money, [h] becauſe in ſtrict reaſon the contract was entire, ſo if a man ſel his owne horſe, and the horſe of I. S. to A. for tenne pound, and I. S. taketh away his horſe, yet an action of debt will lye for the whole ſumme, becauſe the contract was in it ſelfe entire. [i] But if a man reteigne one in ſeruice for a yeare, for tenne pounde to bee payed at two feaſtes of the yeare, and the Maſter dyeth after the firſt feaſt, and before the latter, the Seruaunt ſhall haue his wages but for the firſt Feaſte, becauſe the contracte was at the firſt time appor-tioned. [k]

h 24.H.8.Br. Contract 35. 7.H.7.4

i. 30.H.8.Br. Apportion 7.

k. 27.E.3.Br. Apportion 6.

The Law which is termed *æquum & bonum*, is that which doth mildely interprete, amend, and mollifie the hard and rigorus ſpeaches, and cenſures of the other Lawes: and is ſometime ſharpe and ſeuere, where the other Lawes are remiſſe and conniuent: as may appeare by that ſaying of *Saluſt*, ſentencing the proceeding of the Romaines in a matter of eſtate *fit reus magis æquo bonoq; quam iure gentium Bomilcar comes eius qui Romam fide publica venerat*, & this is not ſo much comprehended

jus æquum et bonum

in writing, as in the true vnderstanding of that which is written. It is necessary by the iudgement of an other Law, which saith *Etsi nihil facile mitandum est ex solemnibus, tamen vbi æquitas euidens poscit subueniendum est.* l. and against *instus iudex æquitatem solutius sequitur.* m. This though it haue place sometimes in the precepts, rules, and cases, of the ciuil and common Laws: yet it hath more affinity with the Law of nature, and the Law of nations, which are ignorant of the knots, and intricate points of these aforesaid Lawes.

l. l. 183. de Reg. iur.

m. l. 14. de reg. iur. § de relig.

Now that we haue discoursed of these seueral Lawes, it remaineth that we should shew what things are the principall obiects of the Law, which may be reduced to two heads, for either they are real or personall. That which is reall, is either land, or that which issueth out of land: land is either firme and fixed earth, or that which is immediatly and coherently annexed to the earth, as houses. By the differences of this diuision a piscarie or fishing is excluded, whether it be *libera piscaria*, that is a libertie of fishing in an other mans pondes, or waters, which he hath in common with others. For ex. persons may haue a fishing after that sort in one riuer, and it is therefore called *libera* because none may disturbe them to whom the fishing belongeth: n. Or *seperalis piscaria*, which in our bookes hath seuerall

Principal Obj. of y Law. Real or Personal.

n. 17. E. 4. 7.

uerall significations, for either it may signifie a seuerall fishing, which one man alone hath in an other mans soile. o. Or els where a man hath a seuerall fishing to himselfe in his owne ground, and so it is a thing compounded of water and of earth, and therefore it is said, that where a graunt is made of a stagne or piscarie, the land passeth. p. And in a Formedon brought of a gorse, which in Latin is called *gurges*, a gulfe or depe Yarmouth, wherein fishes are commonly taken, the demaundant shall recouer the land and soile it selfe. q. And it hath bin adiudged that a fishing so taken lyeth in Tenure. r. And a writ of Aiell was brought of a fishing as a thing lying in demesne. s. And also of a stagne or poole. t. But it cannot be termed land, because the water is not coherently fixed to the soile, but otherwise it is of an acre of lande which is couered with water: for though that be ouerflowed with water, yet it is not naturally ouerflowed, as a ponde or fishe-poole is. v. And therefore it is said 12.H.7. that a man may haue a *Præcipe de vna acra terræ cum aqua cooperta*, or *de vna acra terræ* generally at his election. w. But a tenement cannot be said to bee freehold, except it touche the earth, and therefore a chamber built vpon a hall or parlor, cannot be said to bee freehold, because it cannot be perpetuall, for the foundation may perishe,

o. 18.H.6.29.

p. 4.E.3.3. Feoffemt 79

q. 14.E.3. Formedon 34.

r. 40.E.3.44

s. 20.E.3.Bre 685

t. Temps E.1. Briefe 861

v. 18.E.4.4

w. 12.H.7.4

and for that cauſe it cannot be demaunded by plaint or Writ.[a] Yet 9. E. 4. an exchaunge was made of lande for a chamber,[b] but that proueth it not to be freehold, for an exchange may be of things of diuers natures, as of land for rent.[c] And ſo of a rent for a common.[d] A Caſtell whether it bee a thing either of it ſelfe, or parcell of a ſeigniory or Manor may well be called land or freehold.[e] For though land may not be parcell of land no more then one Leete or Hundred may bee parcell of an other.[f] Yet land may be parcell of a Manor.[g] And a parke may be parcell of a Manor.[h] And land may be parcel of an Honor.[i] And of a Caſtle.[k]

a. 3. H. 6. 1. Plaint 14.
b. 9. E. 4. 40.
c. 3. E. 4. 10.
d. 9. E. 4. 21.
e. 7. H. 6. 36.
f. 3. Mar. 1. Com 168. Hilles cas. 7. E. 6 Com 80. Partridg. cas. 23. H. 8. Br. Feoff. 53.
g. 4 E. 4 16 42. E. 3. 22. 44 E. 3. 40. Feoff. 53. lib. Finda. leg. fo. 70.
h. 3. E. 3 Br. Iuriſd. 39.
i. 26. Aſſ. pl. 60.
k. 4. E. 4. 17.

land 6 ſorts 6 Sorts of Land.

It is nowe ſhewed what may properly be called Land, and it is not impertinent to declare how many ſortes of land, which we haue before called firme ground, may be demaunded by Law, of which the Law hath a ſeuerall contemplation. Land therefore as it is ſubiect to the conſideration of Law is fiue fold, *Arua, Florida, conſita, compaſcua, mineralis, infrugifera. Arua* is the arable ground which is tilled with the Plough. *Florida*, the garden ground, which procreateth flowers, herbes, & all ſuch thinges as the Bee doth feede vpon. *Conſita*, is the wooddie ground which is throughly repleniſhed, with trees, plants, ſhrubbes, and ſuch like. *Compaſcua* is that which bringeth

forth grasse and fodder. *Mineralis* is that, wherein mines are conteigned whether they be regall mines, as mines of Gold or Siluer, or baser mines, as brasse, leade, copper, tinne, coales, or the like. *Infrugifera* is that which is barren, and cannot be helped by manurance as the soile where rushes, weedes, ferne, and such things doe grow, and it is good to know the diuersitie of these seuerall sortes of grounde, that when such thinges are to be demaunded by writ, they may be demaunded by their proper names and kinds, and therefore if a feoffement be made of two roodes of land, and after a house is built there vpon, and part of it is become medowe, parcel pasture ground, and parcell wood, the demaund must be by the name of a house, medowe, pasture, and wood, [l] and there is a writ in the Register, *de minera plumbi & cuiuscunq; generis metalli cum pertinentijs.* [m] and *ruscaria* the soile where rushes do grow must be demanded by number of acres. [n] And where a stagne hath bin, or land couered with water, if the water be turned out of the course or dried, the land may be demaunded by the name of medow. [o]

l. 3.H.6.8.

m. Regist. 165

n. 16.Ass.pl.9.

o. 33.E.3. Entre 80.

That which issueth out of land, or the profits of land are of three sortes, Naturall, Industriall, and Artificial. The Naturall profits of land are such as doe rise by the force and benefit of Nature principally, and not by the

Effitte of land 3 sorte 3 Sorts of profits of Lds

the diligence and labour of man, as apples, hearbes, trees, and such like. Industriall profits are such as doe principally require the diligence and culture of man, which vnlesse it be continually applyed, *natura nihil operatur*, as corne, hoppes, woad, saffron, and such like. Artificiall profits are these, which are reserued, graunted or issuing out of land by the Acte of man, and the approbation of Law, as a common of pasture, a warren, a rent, and thinges of like sort. Common of pasture is of fower sortes, appendant which is belonging onely to arable grounde, or to land that consisteth as well of arable ground, as of other thinges, as a Manno or measuage, but the appendancy doth principally grow by reason of the arable, and therefore it belongeth to such beastes onely as doe manure or marle the grounde, as horses, oxen, kine, and sheepe. p. And if a man haue common to certaine arable landes in one Village, hee cannot vse the Common with beastes that manure his arrable in an other Village. q. And this ought to bee intended of auncyent arrable ground, not of land newely improued. r. For continuance of time immemoriall maketh the appendancy, wherefore if the arrable land to which common is appendant, do by purchase come into the possession of the owner of the soile, in which the common is to be taken, the com-

Comon of pasture of 4 sorts 1: appendant

p. 37.H.6.34

q. 10.E.3.56

r. 10.E.2. Cõmon 22. 5.Ass. pl. 2.

common is extinguished in his person: But if after the tenements be seuered by alienation as they were before, the common is reuiued by some aucthoritie, [f] because the same auncient arable land to which before it belonged still continueth: But by some it is otherwise, because being once extinguished it cannot be *de nouo* and in an instant made appendant. [t]

f. 4.E.3.45. 17.E.2.Common 23.

t. 14.H.4.2.

Common appurtenant is where a man prescribeth to haue common of pasture belonging to his land with all maner of beastes, it differeth from a common appendant in this, that a common appendant is onely to be taken by such beasts as manure or marle the ground, and by such number of beastes as will serue to manure or marle the ground, to which the common may be claimed, and belongeth onely to them as long as they are demurrant vppon the land: But a common appurtenant may be taken by all maner of beastes. [a] Likewise a common appendant must be onely claimed by reason of land which may be marled or manured: but a common appurtenant may bee claimed by reason of a messuage or house. [b] Furthermore a common appendant groweth onely by continuance of time, and the essence of it is prescription ioyned with appendancie, [c] But a common appurtenant may bee graunted at this day, and springeth vp in an instant. [d] And a common appendant can not be

2. Common Appurtenant. differonce

a. 37.H.6.34. 9.E.4.3.

b. 22.H.6.43. 4.E.4.29.

c. 26.H.8.4. 5.H.7.7. 4.H.6.13.

d. 26.H.8.4. 15. Assis. pl.5. Common 13.

be seuered from the land to which it belongeth: [c] But a common appurtenant may be seuered: [f] And they differ in this, that a common appendant must be vsed and taken, according to the rate and quantitie of ground, in regarde of which it is granted or claimed. [g] But a common appurtenant may be claimed for beastes sans number: for by the opinion of *Monbray* none shall haue a writ of Admeasuremēt of pasture, but he that hath a common appendant: [h] So that it may be probably collected, that a common appurtenant because it cannot be admeasured, may be wel enough sans number: And it may be likewise to a certaine number of beastes, for if a man at this day will grant one a mesuage with a common appurtenant for tenne beasts, I doubt not, but this is a good common appurtenant to the mesuage.

c. 5.H.7.7.

f. 26.H.8.4.

g. 15.Assi. pl.5.

h. 18.E.3.30.

3: Common by Vicinage

Common by vicinage is where two townships or moe do entercommon, and haue entercommoned from time out of mind, which is not to be vsed, by putting the beastes of the inhabitants of one towne, into the landes of the inhabitants of an other towne, for so they may be distrayned damage feasant: But they must put them in their owne fieldes, & if they stray into the fieldes of the other village, they must suffer them to be there, and they must put in their beastes, hauing regarde to the freehold of the inhabitants of that village where

where the common is to be vsed.[i] This kind of common *Mast. Littleton* maketh appendant,[k] but by other aucthoritie it is a seueral and distinct kind of common.

Common in grosse is where a man claymeth to haue common for all maner of beastes, whether the number be certaine or vncertaine by speciall graunt in writing, or by prescription in him that claymeth or his auncestors, or they whose estate he hath, not by reason of any particuler land: & this common may be vsed by the beasts of a stranger, which the proprietarie of the common may giest, as we tearme it.[m]

A Warren is a profite likewise which may be taken out of other mens ground by prescription,[n] and if the owner of the soile or any one by his commaundement, or as his seruant doe come vpon the soyle, and do chase the Conies, he cannot iustifie the chasing,[o] though he may iustifie his entrie into the ground.[p] And a rent is also a profit issuing out of the soyle of a stranger, and sauoureth of the nature of the land, out of which it issueth, & therfore if rent issue out of land in auncient demesne, it is auncient demesne, & so it is of rent granted out of land in Gauelkind, it shalbe deuided as the lād it selfe:[q] And so it is of rent graunted out of land deuisable by custome, though the rent bee graunted but of late time.[r] And so if rent be receiueable out of customarie land,

as

i. 13.H.7.13. 15.Elizab.316. Dyer.
16.E.3.Common 9.
22.H.6.51.
6.E.6.70.Dier.
k. 7.E.4.26.
m. 11.H.6.per Babing. Mart. & Paston.
45.E.3.25.Assise 61.
36.Ass.pl.3.
15.Ass.pl.5.
Perkins tit. Graunts.
n. 30.H.6.28. Dyer.
o. 34.H.6.43.
p. 3.H.6.12.
q. 4.E.3.53.
14.H.8.5.
r. 22.Ass.pl.78.

as borough English, or where dower is to be had of the halfe part, and such like, the rent shall be of the custome and nature of the land, and therfore in the demaunde of such rent by Præcipe, or in a Replevin, the tenure by auncient demesne of the land is a good plea.

f. 14.H.8.5.

And so if land in taile be deuided amongest parceners, the rent reserued to one of the parceners shall be in taile, and of the same condition as the land was.

t. 2.H.7.5.
15.H.7.14.

Personall thinges are thinges either in possession, or in action: Thinges in possession are either goodes or chattels: the name of goodes is naturall and ciuill, by the naturall signification all such thinges are comprehended vnder the name of goodes, which may profite.

Personal Things

u. l. 49. de verb. signific.

But as the name of goodes is taken ciuilly, it stretcheth to the whole heape and bodie of a mans wealth, together with the charge and deductions: the reason of this difference is because nature considereth thinges as they are: but a common wealth by title after such sort as is most expedient. And though the charge which followeth goodes do detract somewhat from the value and estimation of the same, yet because it is to be discharged and satisfied out of the goodes, it is therefore iointly reckoned and considered with the goodes themselues.

a. Alber. Gentil. lib. 4. Epist. c. 7.

Chattels which in the common Law are tearmed *Catalla*, are diuersly taken, for the profits

profits of land if they be gyuen generally vnto the King by acte of law, they may be called Chattels, and therefore the profits and issues of the landes and tenements of them which flie for felony are forfaited vnto the King, vntill such time as they be acquited, and that by the Statute of Prærog. cap. 10. which sayth that the King shall haue *omnia Catalla talium fugitiuorum*, and vnder the word *Catalla* is comprehended the corne which was growing vpon the land, at the time when the forfeyture of the goodes did begin to take place, [b] And if a man be outlawed in an action of debt, and the outlawrie be retourned, so that the writte issueth to the Escheator to seise the goodes, chattels, and land of the partie outlawed, the issues of the land shall be taken to the kinges vse vntill he haue sued his Charter of pardon: [c] for an outlawed person shal not forfait any land, but the profites onely, as rent and corne, if he be outlawed in a personall action: Otherwise it is if he be outlawed of felonie, for then the King shall haue the escheat of the land, or the Annum, diem, & vastum. [d] But if the profites of land be generally graunted by the act of the partie, then they are the substance of the land and doe not passe without liuerie: And if a man graunt the profites of land, the land it selfe passeth. [e] And therefore it hath bin held by *Forteſcue* and

b. 3.E.3.Corone 3.4.

c. 8.R.2.Superſedeas 19.

d. 9.H.6.20.

e. 14.H.8.5. 45.E.3.90. 4.Elizab.210. Dyer.

and *Danby* Iuſtices, that tenant in fee ſimple may graunt *veſturam terræ*, and the grauntee ſhall haue it after his death: But the tenant in taile, for life, tenant in dower, and tenant by the curteſie cannot make any ſuch graunt, but if they dye the graunt is determined. f. And if a feoffement be made of land vpon condition that neither the feoffee nor his heires ſhall take the profites, the condition is voide, and the feoffement ſimple and abſolute, g. and in ſuch caſes the profites of land may not be tearmed *Catalla*, no more then the landes themſelues: But vnder the word Chattels, a leaſe for terme of yeares is compriſed. h. And likewiſe a right of action for goodes: as if goods be taken wrongfully from a felon: i. Or when one is indebted to a felon by bond: k. Or when he is accomptable to a felon by reaſon of any receipt, or otherwiſe. l.

f. 37.H.6.30.

g. 21.H.7.24.

h. 39.H.6.35.

i. 6.H.7.9.

k. 19.H.6.47.

l. 28.E.3.92. et 50.

Thinges in action are ſuch in which a man hath neither propertie nor poſſeſſion: as if a man doe owe to an other xx. peund vpon a writing obligatorie, though he haue a propertie and poſſeſſion in the m. writing or charter, yet the ſumme contained is a thing in action, in which he hath neither propertie nor poſſeſſion: and ſo it is of an Aduowſon when the church is voide of an incumbent: for the patron can not graunt it to any other, becauſe then he ſhould graunt but *fructum aduocationis*, which

m. 1.H.7.15.

is a

is a thing rather imagined by law, then subsistent by nature: and therfore the patron can not truely be said to haue propertie or possession in it. But though such thinges be to some intent merely in action, yet in some cases they are taken as thinges vested: and therefore if a man be seised of an Aduowson, and the church become void and he dieth, his executors shall present, and not the heire, [n] for the aduowson in regard of the executors was a chattel vested in the testator. The King may graunt things in action, [o] and so may a common person in some cases: As if a man bring an action of debt against I. N. and the plaintife is indebted to me, and promiseth me that if I will ayde him against I. N. that I shall be paied out of the summe in demaunde: there it is lawfull for me to ayde and maintaine the plaintife against I. N, because by the promise I haue interest in the summe demaunded. [p] And where a man is indebted to me in xx. pound, and an other oweth him xx. pound by obligation, he may assigne this obligation and debt to me in satisfaction: And I may maintaine suit for it in the name of the other.

n. Fitz. Na. br. 34.

o. 2. H. 7. 8.

p. 15. H. 7. 2.

A Table

A Table of certain words in the Interpretation whereof the Common Law of this Realme and the Ciuill Law doe seeme to agree.

A.

ACcusatio A bill of presentment, is a regular fourme of complaint, whereby offences, are opened and punished.

Acquisitum purchased, that is said to be whereof the propertie is translated from one to an other.

Affines are the kinsmen of the husband and the wife by mariage, so called, because two kindreds which are diuerse one from the other, are coupled by marryage, and one of them commeth to the borders or marches of the other kindred.

Ad nos pertinere is said that which doth belong vnto vs, eyther by way of propertie, or by way of possession, or by charge, or by administration.

Ædes, plural: a house consisting of diuerse rowmes, (for domus may consist onely of foundation, wall, couer) as the integrall partes, or as some briefly say, which consisteth of soyle and superficies,

AEstas

Æstas sommer, a part of the yeare, which beginneth at the equinoctial of the spring, and endeth at the equinoctiall of Autum, and so sommer & winter are deuided by vi. moneths.

Annona vittaile, is not referred onely to corne, but to the meate of the shambles, aswell to fish as flesh.

Aperta vis, open force, which is manifest and euident, and doth not receiue any excuse of simplicitie.

Arbor vento deiecta, hath not now the name of a tree, but the name of wood. Arbor dum crescit, lignum cum crescere nescit.

Area, a floare is a vacant place, therefore called Area quasi exaruerit, and were not able to bring forth any thing, it hath bin taken to be such an emptie place as doth lye discouered, locus ab ædificio purus, and hath no superficies: it is called a plot of grouñd, court or yard.

Argentum siluer, it is of three sorts, infectũ, factum, signatum. Infectum is that which is vnpollished and not adorned with any particular forme being in the ore, or bullion, newly seuered and singled from the ore. Factum, is that which is beutified with some particuler forme, of which kind is a siluer cuppe, a siluer goblet, a siluer bowle, or a siluer mazard. Signatum is that which beareth some speciall Image or impression, & such is the siluer that is coined & accompted currant, Argentum factũ

must be described by the kinde or shape, Infectum by the weight, Signatū by ỹ number.

Arrestare, is by the authoritie or warrant of the lawe, to hinder that either a man or his goodes bee at his owne libertie, vntill the lawe be satisfied.

Artifices, artificers, are they which sell things laboured by them, and by their labour reduced into a particular forme, as Shomakers, Smithes, Glouers, Taylors and Weauers, but artificium if it be largely taken, extendeth to ỹ knowledge of euery arte: artifex and opifex differ, for in the one there is labour and iudgement, in the other labour only.

Assultus, an assault is a violence done to a mans person, by the person of another man.

B.

Bona fides a sincere conscience, excusing one of ill meaning.

C.

Carcer is taken two wayes, for it is eyther locus custodiæ, or locus pænæ.

Cauillatio when a man turneth his speach ab euidenter veris, ad euidenter falsa.

Cella because there we do celare, we do hide that which we would keepe secret or close.

Ciuitas, a citie: it is taken materially, and formally: being vnderstoode materially, it doth signifie a multitude of houses made of stone and timber, being formally taken, it is ciuilis societas quasi societas simul viuens, and

not

not viuens ſimplie, but viuens bene, for as *Cicero* ſaith, ciuitas ſine legibus is corpus ſine anima, and therefore *Ariſtotle* ſayth, non concedimus vt homo imperet ſed ratio.

Cliens, is he that is in ſuite, ſo called quaſi colens, and hee who dealeth for him in the cauſe is called patronus, quaſi pater.

Codicillus, the declaratiõ of a mãs laſt wil, which without the iuſt ſolemnitie of a teſtament a man ob impedimenti neceſſitatem is inforced to write, but now the vſe of codicills or teſtaments are without any neceſſitie confounded, which is contrary to lawe, for a codicill ought to ſerue neceſſitie, & not a rash onſet.

Cognatio kindred, it is deuided into three parts; 1. into parents, 2. into childrẽ, 3. into coſins. Parents are they of whom we are begotten, as father, mother, grandfather, grandmother, and theſe which are in degree aboue them. Children are they which are begotten of our bodies, as ſonne, daughter, grandchild, and ſuch as be vnderneath them, Et nati natorum et qui naſcentur ab illis. Coſins are they which haue neither begotten vs, nor bin begotten of vs, but haue a common roote and originall with vs, as brother, ſiſter, vncle, aunt, and ſuch as do diſcend from them. Kindred 3 ſorts

Colludere, is in fraudem tertij conuenire.

Commenda, the cuſtodie of a Church committed and commended to ſome.

Commodare is to graunt the vse of some thing for a certain time, there is difference betwixt commodare & mutuo dare, because cõmodare is to lend, to haue the same againe, as bookes, apparel, and such like, but mutuo dare is to trust, hoping to haue the like againe, as money, corne, salt, spices, and such like.

Compromissum, is the power that is giuen to the arbitrator, so called because both the parties doe promise to obey the opinion of the Iudge, & therfore he is called compromissarius index to whom the matter is referred.

Communitas, a comminalty, is societas hominum communi lege viuentium.

Conditio, when a thing dependeth super casum incertum which may tende eyther ad esse or ad non esse.

Confessio, is double: either iudicial, or extraiudicial, iudiciall is that which is done before the Iudge, extraiudicial which is done in presence of good and honest men.

Consentire, is to meete in one opinion.

Constitutiones, Iudgements, rules and awardes concerning seueral matters whereupon this verse hath bin made.

Quatuor ex verbis virtutem collige legis,
Permittit, punit, imperat, atq; vetat.

Controuersum ius, is that which is on both sides doubtful: certum ius is that which is certainly determined & is called positiue Law.

Copulatiua the coniunction copulatiue is taken after two ſoꝛts, either in a deuided ſenſe, oꝛ in a compounded ſenſe, in a deuided ſenſe as when I ſay, Sir Robert Booke, and Sir Iames Dyer were Loꝛd chiefe Iuſtices of the Cõmon pleas, foꝛ they were not chiefe Iuſtices togeather, but at diuerſe times: in a compounded ſenſe, as when I ſay two & thꝛee do make fiue.

D.

Debitoꝛ is he of whom we may againſt his wil exact money.

Decimæ are of thꝛee ſoꝛts prædiales, perſonales, and mixt prædiales are they which ariſe of farmes oꝛ lands, as coꝛne, hay, and the fruits of trees: perſonal which are due by perſonall laboꝛ, as by ſome trade, trafick, oꝛ miſtery, mixt of which it may be doubted whether they be predial oꝛ perſonal as wool, lambe, milke &c.

Defenſio, is the auoiding of a ſurmiſed & pꝛetended offence.

Delegatus a delegate, to whom a cauſe is cõmitted to be determined and oꝛdered.

De plano, vel ſine figura iudicij, vel ſummarie.

Deprehendere, is to take a man in ipſo facto, ſo that he can neuer flye, noꝛ denye the facte.

Diſcendere to diſcende oꝛ to ſpꝛing of ones body, hereupon they which are boꝛne of vs are

called by the name of diſcendents, which with them that aſcend make the right line, and the aſcendents and diſcendents cannot marry together, wherefore if Adam were now liuing he could not marrie a wife.

Diœceſis, the gouernment of a certaine prouince by the Biſhop, for as a territorie is ſo called, quatenus iudex ius terrendi habet, ſo a dioceſe as farre as a Biſhop hath ius adminiſtrandi ſacra.

Diſpenſatio, a releaſe of common right, either ex cauſa vtilitatis, neceſſitatis, or ingentis prærogatiuæ meritorum.

Diuerſa, ſuch things whoſe ſubiect is not alike, or whoſe definition is not alike.

Dominium is a right to diſpoſe perfitly de re corporali.

Domus inſtructa, a houſe furniſhed, if a man deuiſe ſuch a houſe the houſehold ſtuffe paſſeth, but not the wine that is within the houſe, becauſe by common intendement a houſe is not furniſhed by wine.

Dubia cauſa, is that which is but ſemiplene probata.

E.

Error, an opinion, whereby that is approoued and allowed to be true which is falſe, and that to be falſe which is true, and error may be two wayes, eyther in iure conſtituto, or els

Error 2 wayes

in

in iure quod quis in ſuo habet negotio, the one is an erroꝛ in lawe, the other in facto.

Euaneſcit actio, the action doth faile, oꝛ abate, euaneſcit actio, by the power of the lawe, oꝛ of the Iudges, remittitur actio, by the will of the plaintife.

Executor, an executoꝛ, which is after three ſoꝛts, executor teſtamentarius, executor legalis, that is to ſay the oꝛdinarie, executor datiuus, the adminiſtratoꝛ.

Election, is the certainetie of our will, it may be of perſons, oꝛ of thinges, places, oꝛ times: Of thiugs, as if a man ſhould pay a ſumme of money, oꝛ els a hoꝛſe oꝛ a hawke: Oꝛ of perſons, as if he ſhould pay it to I. S. oꝛ to I. N. Oꝛ of places, as if he ſhoulo pay it at London, oꝛ at Lincolne. Oꝛ of the time, as the firſt day of Apꝛil, oꝛ the ſecond day of May.

F.

Falſitas, falſhood is immutatio veritatis cum doto & damno alterius, the chaunge of truth with falſehoode to the deceiuing and endamaging of an other man.

Fama, is a common repoꝛt pꝛoceeding from ſuſpition, and publiſhed by the voices of men, and it differeth from rumoꝛ, becauſe that is a diuerſe whiſpering of men, which is not ſo effectuall as Fame. Fama conſtans is that which is diſperſed abꝛoade neither by men

vnknowen, nor of light credit, nec ignotis nec improbis.

Fidemator is he which bindeth himselfe for another, quasi inssu alterius ponens fidem suam.

Fortuitus casus, a meare chaunce which by mans counsaile, care, and diligence can neyther præuideri or præcaueri, be fore-seene or foreclosed.

G.

Generalis lex, a general law which comprehendeth all cases, except such as be vnlawfull, and vniust. For there is nothing more absurde then to draw a iust Lawe to an vniust interpretation.

Germani fratres are they which are of the same Father & Mother, Consanguinei which haue the same Father, but not the same Mother, Vterini which haue the same Mother, but not the same Father.

Gestores negotionũ, factors or procurators be of three sorts, voluntarij which gratis and of their owne accord do regard the busines of their friend: Necessarij which by obligation of their office doe follow matters: Quasi necessarij, which haue some colour to deale in matters.

Græca mercari fide. i. pecunia numerata with money paied in hand.

Ille-

I.

Illegitimi bastardes, whereof there be three sortes, Incestuosi which be begotten of kinsmen and kinswomen within the degrees prohibited: Nefarij, which are begotten of descendents, the chyldren of the same parent: Spurij, or Adulterini, which are borne in adulterie.

bastardes 3 sorte

Iniuria whatsoeuer is done against law and right, whether by wordes, as by slander: or by deede, as by violence of hand.

Inops sine ope without helpe, which hath no wealth nor maintenance, whereby he may helpe himselfe.

Instaurare, is to bring a thing into his fourmer estate.

Insula, a plot of ground compassed on all sides with the sea, quasi in fato posita, it is of two sortes: Perpetua, and Natiua. Perpetua, which hath bin from time out of minde part of a Prouince: Natiua, which hath bin lately discouered by the ebbe and drought of waters.

Interlocutoria sententia, which doth not define or determine the controuersie, for that is called sententia definitiua: an Awarde.

Iudex limitaneus, which hath a limitted iurisdiction, as the Lord in Court Baron who onely holdeth plea of a summe vnder xl. shillinges, and within the precinct of his Mannour.

Iura-

Iuramentum an oath, it is the affirming or denying of a thing with religious assertion, or attestation, and it is double: Extraiudicial or Iudicial. Extraiudicial, as Iuramentum conuentionale, when vppon a bargaine one doth sweare to an other. Iudicial is of two sorts, Necessarium, & Suppletiuum: Necessarium, which is ad litem æstimandam, when witnesses are produced by the parties. Suppletiunm, when the Iudge doth enforce the partie himselfe to sweare for want of other proofes.

Inseperabile, that is said to be which is so inherent in the subiect, that it cannot be remoued, but they do either stand together or fall together. A thing may be said to be individual or inseperable in many respects, 1. according to the fourme required in the act: And therefore if three be bound iointly, they must be sued iointly, 2. by reason of necessarie depending, and therefore the principal being defeated, the accessorie is also destroyed, because it cleaueth inseperably vnto the principal: and therfore if the marriage be not lawfull, the endowment cannot be lawfull, 3. by the meaning of the parties: as when a submission is made to two arbitrators, it is not to be imagined that the parties had an intent of seuerance, 4. by the nature of the thing: as when a thing will not suffer a particion: as a seignorie in grosse, a common, a condition, and so a iurisdiction is an

entier

entier thing: and therfore if a man will bring an action in a base Court of a debt of 4 li. it is not good for thirtie shillinges, or a lesse summe: for a Iudge or officer hath a precise power of the Law, and if he passe his iurisdiction, his sentence or act is voide.

Integrum is that which is compounded of diuerse partes, for partes compacted & ioyned together doe make the whole, but an entier thing may be diuersly: for it may be eyther totum numerale consisting of many numbers linked together, 2. totum vniuersale, as the general nature wherof the particulers are comprehended: as homo of animal, auis of brutum, 3. totum integrale which is made whole and entier by many partes, and it is of two sorts, Heterogeneū, and Homogeneum: Heterogeneum the partes whereof are not of the nature of the whole thing, as a house which doth consist of soyle, stone, woode, morter, & couer, Homogeneum which is of the same nature with ỹ whole, as water, fier, earth, wherof euery part hath the name of the whole.

L.

Lacus is that which hath perpetuã aquam. Stagnum that which hath water at sometime, and is sometime drie. Fossa a receptacle for water made by mans hand.

Lana, wolle, which may be cloath, but yet is not wrought in cloath. And if a man by his

by his will do deuise his wolle to any, be it wrought or not wrought, dyed or not dyed, or be it spunne, it is compriſed vnder the name of wolle, and it is called by the name of Wolle vntill it be made cloth.

Littus, that place to which the greateſt floude of the ſea doth come.

M.

Maieſtas, a ſoueraigne honour: Maieſtie is ſaid to be the daughter of honor & reuerence.

Marinum et Maritinum do thus differ, Marinum is that quod Mare incolit, which lyueth in the Sea, or which is bredde in the ſea, Maritinum quod Mare accolit, which is adioyning, or adiacent vnto the ſea.

Mercator, a Merchant, is not as ſome think tearmed a Merce, but of the word Mercor, which ſignifieth to buy, and they are properly tearmed Mercatores, qui res emunt quas in eadem ſpecie cariùs vendant.

Moneta, à monendo, Money, ſo tearmed, becauſe by the impreſſion of the ſtampe it doth giue vs notice, either of the prince whoſe it is, or the price which it beareth: It taketh Legem valoris, the rule of the value of the ſuperiour, & therefore it cannot be abaſed or refuſed, but by the commaundement of the ſuperiour.

Mortua res, that is ſaid to be by which a man is not richer.

Motu

Motu proprio, ex certa scientia, de plenitudine potestatis, are prægnantes clausulæ, clauses of importance, against which none may be heard.

Mutuum, quasi ex meo tuum.

N.

Narratio, a declaration of a matter eyther ore tenus, or in forme of law: If it be ore tenus, it is called a motion, & thereof it is said, qui bene narrat, bene impetrat: If it be in forme of law, it is a declaration grounded vpon a writ, containing the whole state of the matter, as the plaintife supposeth it. declaracon.

Naturaliter possidere he is said, which possesseth a thing corporally, & taketh the profits of the thing possessed, and this of the common Lawyers is called possessio in facto: But if a mans father die seised, & the sonne doth not enter, nor actually take the profites, neither doth any other disturbe him to take possession, this is called a possession in law, or ciuilis possessio.

Negotium meum, that is said to be, cuius lucrum & damnum ad me pertinet.

O.

Obuentio is a kind of reuenew: it differeth from Reditus, being strictly taken, in this, that obuẽtiones are contingentiũ, reditus certorũ.

Oculis res subijci dicitur when it is plaine & manifest, it is well said of *Erasmus*, ad cognitionem magis faciunt aures, ad fidem faciendam

dam

dam certiores sunt oculi.

Officialis, an Officiall, who in a certaine part of the diocesse is the Bishops deputie.

labour double

Opera labour, it is double, Officialis, and Artificialis: Officialis, is that which is spent & bestowed vpon the diligent attendance done by the seruant to the Maister. Artificialis, is the labour of the trade, as Painting, paueing, seeling, graueing, embroidering, & such like.

P.

Pactum is the consent of two or more in a matter which pleaseth both parties, Pollicitatio is when there is not the consent of two, but onely one agreeth. Pactio nuptialis is a Matrimonial contract. Pactum retrouendēdi is when the vendee couenanteth, that if the vendor or his heires or executors will within a certain time pay so much money, as the vendee doth pay, that then he shal haue the land again, and be in his former estate.

Palam factū is that which is done opēly. Publicè factū is that which is done corā populo.

Paries, a wall; therof there be diuerse kindes: Lateritius which is made of clay, Testaceus which is made of bricke, Cœmentarius which is made of lime, stone, and water mingled together, Craticius which is made of wood, boardes, or boughes, platted together.

Paræcos, a parishioner, an inhabitant in a certaine place, who hath brought his household

to a certaine place, to reside there.

Prętor maior, he Maior of a city, as *Rhodiginus* saith: for others ar called Prętores minores.

Priuilegium is ius singulare, whereby a priuate man, or a particuler Corporation is exempted from the rigor of common Law, for that which is now called proprium, hath bin called of olde writers priuum.

Proprium that which doth so belong to one that it is not cõmon to an other, & though that wherein we haue a ioint propertie with others may be called nostrum: yet it cannot be called propriũ, for propriũ doth not admit any communion, but proprium & suum be equipollent, and of the same sense.

Puer hath three significations, either it signifieth the estate of a man: as when we call seruants pueros: Secondly the sexe, as when we call a male child puerum: Or els the age, as when we call one that is yong puerum.

Pars is that wherby the whole is supported, it is either pars diuisa, or pars indiuisa, this diuision wil hold both in nature & Law: In nature that id a diuided part, which consisteth of diuerse parcels: as the wing of a bird, or the clouen hoofe of a beast, or the finne of a fish are said to be parts diuided: In law there is also a diuided part, as the third part wherof a woman is indowed after the death of her husbãd, & after the assignment made, and the third part of the

land

land of the tenant in Capite, which the king hath after his death: Likewise the partes of a manor diuided by parceners: A part vndiuided is manifest to the vnderstanding & to the eye: to the vnderstanding, as the moitie or third part of iointenants, parceners, tenãts in common, before partition: to the eye, as the vncloven hoofe of a beast, or the partes of the earth cleauing contumately together.

R.

Ripa, a banke, it is proper to a floude, as the shoare is to the sea. Ripa is that which doth flumen continere, stay the natural force of his course, and that is said to be a banke, quæ plenissimum flumen continet, which stayeth the water, when it is at the highest.

S.

Sequestratio is either a seperation, by way of compounding, or by interdiction of possession: It is voluntaria, or necessaria, Voluntaria, when it is done by the consent of the parties, Necessaria, when it is done by one that hath a competent aucthoritie to sequester.

Sylua cędua, which being cut may grow againe.

T.

Tugurium, quasi tegurium, it is taken of some for euery countrie house, but not rightly,

for

for the house which doth consist of walles and tiles or bricke is no cotage, but a cotage is that which doth principally consist of reedes or thatch or sodes, earth and twigs layed together, and compacted by clay or slime, or which hath in it a very small deale of timber.

Tumultus is taken for euery perilous commotion, if it be publiquely and hastely done.

Turba, a multitude, consisting at the least of the number of tenne.

V.

Vacillaus testis, which doth giue an inconstant and diuerse testimonie.

Vagabundus, which hath neither certaine house, nor stedfast habitation, a man, as one tearmeth him, *sine re, sine spe, sine fide, sine sede.*

Vel, a particle, it doth not alwayes disioyne, but sometimes explane.

Vis force or violence: it is of diuers sorts, *vis detractiua*, when a man taketh a thing from one against his will: *vis compulsiua*, when I compell a man to assent to a certaine acte, *vis diuina*, commonly called *vis maior*, whereof there is no resistance: *vis expulsiua*, which is done with weapon, and it is called of some *vis armata, vis inquietatiua*, when I

am disseised by force, *vis imminens* the striking or assault of a man. *Vis* is not *verbis*, but *facto*, for he is not said *vim pati*, which is onely touched by wordes.

Vniuersale quod ad vniuersos pertinet.

What methode is to be vsed in handling and disposing matters of Law.

The ninth Chapter.

OF methode it were better to write nothing then little, for so many diuerse methodes are proposed by many diuers authors, that plentie breedeth scarsity, and a man can hardelye tell which to choose. Curiositie as in all other thinges it is vaine, so in methode it is necessarie. For to proceede without equalitie of tenor is negligence, and to obserue methode vnartificially is ignorance. They that giue a reason of the beginning, continuance, and ending of their tractats and discourses, are without doubte the most iudiciall and most plausible methodistes: or they which so temper and moderate the course of matters, that though they

they render not a preciſe reaſon of their doe-ings: yet it is apparant to the reaſon and vnderſtanding of others. A twofolde methode is verie much talked of, and that is by proceeding either *a ſingularibus ad vniuerſalia* or *ab vniuerſalibus ad ſingularia*, the one of theſe I accompt no methode at all, howſoeuer it hath vſurped the name, being but a natural diſcerning of thinges done in *facto* by the ordinary direction of the ſenſes, and making thereof a generall concluſion, which is eaſie and familiar to euery mans capacitie, ſo that the praiſe of that action is diligence and not art, for is it any difficult thing to reaſon and conclude, wood is heauie, ſtone is heauie, iron is heauie, *& ſic in cæteris*: therefore all thinges made of earth are heauie: how prone and readie is the perceauing of theſe particulars to euerie mans ſenſe: and how eaſilie may the concluſion be framed by his vnderſtanding? but in deede the diſcourſing from vniuerſalles to particulars is more hard, more artificiall, more compendious, for it is done in leſſe compaſſe and fewer wordes, which is a great argument of a good methode, and therefore I doe not agree to *Ariſtotle* that Athenian Doctor, when hee ſaieth, *Ars tum exiſtit, cum ex multis experientiæ notionibus vna quæ ad vniuerſum genus accommodetur naſcitur præceptio*, [a] Unleſſe hee meane it of

a. Metaphyſ. 1, c. 1.

vulgar and mechanicall trades and occupations, whereof onely I admit it to be true, but I rather approoue that which he saith, and doth likewise: *progrediendum est ab vniuersalibus ad singularia.* [b] But there be some which will not allow any discourse but that which is furnished with mathematicall and demonstratiue reasons. Some would haue euery thing handled by examples, as *Ramus*, a man happier in writing, then in reprooving one that writ better then hee: who in handling Logicall places, doth illustrate them with many examples, but with neuer a rule. What manner of teaching is this, to shewe vnto thee that others did thus: but not to shewe why they did so: which default is for want of rules, in which the reason and knowledge of doing thinges aright is conteyned. A man cannot make a shooe by a number of lastes, but hee must haue instruction of one that is skilfull in the trade. Some againe will haue euery thing confirmed by the authorities and testimonies of them that be learned, thinking that onely to be the fit way of teaching. But the certaine and necessarie reasons of the Mathematikes, are not in all artes to be required. [c] Neyther is there an ἀκρίβεια or accurate kinde of handling things in all sciences alike to be vsed and obserued: but in euery science things are so to be ordred and

b. Physicor. 1. c. 1.

c. Arist. Metaphys. 1. part. poster. c. 3.

and digested, as the subiect or matter doth require where about it is employed, and so farre forth as may be agreeable to the profession of the science. For a Geometrician and a Carpenter doe diuersly handle and vse a right line, the one, as it may be profitable to his worke which he carueth, the other searcheth what kinde of thing it is, and of what nature and so other sciences must be ruled by the subiect which they contemplace, least there be more πάρεργα then ἔργα in them: neyther is a cause or reason to be exacted in all things, for of many it is sufficient to haue this knowledge *quòd ita sunt*, though we cannot know *propter quod ita sunt*, as of principles which are the first and highest rules in artes and sciences, and therefore no reason can be yeelded, because they are *prima*, the very first in the discourse of reason, and therefore αὐτόπιστα for thẽselues to be beleeued. Surely Methode is so conuenient a thing in the studie of the lawe, that without it neither can the vnderstanding be well taught, nor the memorie well directed. It is not enough to haue a great heape of things that are to be read, vnlesse the vse or order and manner of reading them be well vnderstoode: and as in things that be fit for banquets, though there be great varietie of sweete meates, yet there is nothing more vnpleasant or vnholsome if they

be mingled together, so the Student must haue a care least the order of his reading be confounded, least the last things be handled in the first place, and these thinges which should be in the middest be put in the last place, whiche whosoeuer doe, they cannot onely not comprehende the thinges which they studie, but vtterly debilitate and weaken the strength of the memorie: therefore it is good for Students to vse an artificiall *Analysis*, or resolution of things, into their principles, which may teach to deuide the whole into his partes, and to subdeuide partes into parcells, and in the end to make a consent and coherence of the entire thing and his partes: for though the skilfull partition of things be profitable and pleasant for the memorie, yet the *Synthesis*, that is the apt composition, coordination, and mutuall dependance of them doth more satisfie the vnderstanding. [d] Therefore *Polybius* a iudicious author saith well, that they which thinke by the knowledge of particulars dispersed to attaine to the full and perfit knowledge of the entire thing, doe no lesse erre, then hee who viewing the partes of a handsome and comely body seuerally and apart, doth therefore imagin that hee knoweth the whole feature and portraicture of the same man, who if hee had beheld these parts ioyned together, and compacted,

d. Polyb. lib. 1. histor.

pacted, and moued by the ſpirit of life, would haue iudged farre otherwiſe. For though a man may haue a confuſed notion, or conceite of the whole, by viewing the ſeperate and diſioyned partes, yet it is not poſſible that hee ſhould haue certaine knowledge of the ſame, no more then a man by ſeeing perticular Mappes of Cities, may certainely perceiue the figure, ſituation, and order of the whole world. But he that can eaſily reſolue things, may eaſily compound: for when he knoweth the particular ſenſe and vſe of the thinges reſolued, hee may eaſily gather a generall knowledge of the whole thing, that is, a generall knowledge of manye particulars, whiche make one entire thing. The forme of this *Analyſis* following, whiche is of Maiſter *Littleton* his two Chapiters of fee ſimple, and fee taile, I doe offer to the Student, as a thing to be conſidered of, becauſe it is incident to this purpoſe, which though it gaine not his good liking, yet if it miniſter but occaſion vnto him to aduenture vpon the conueyance of ſome other *Analyſis*, that may receiue the generall approbation, and iuſt applauſe of the learned, I ſhall thinke my labour herein well beſtowed, and woulde gladlye reape profit by other mens preſidents.

The Analysis of Littletons Chapiter of Fee simple.

Tenure in fee simple may bee considered

- By the definition
  - Inuented.
  - Expounded.
- By the tenant in fee simple who is after two sorts to be considered.
  - Generally.
  - Particularly.
    - 1 Inheritance in fee simple may lineallie discend but not lineally ascende which may be illustrated by sixe prerogatiues.
      - By the vncles prerogatiue.
      - 2 By the fathers prerogatiue which is threefold.

Fee simple is as much to say, as a lawfull and pure inheritance.

He that will purchase lands in fee simple must haue these wordes in his purchase, (To haue and to hold to him and to his heires, for these words his heires make the estate of inheritance, and he that lacketh this word (heires) and hath to haue and to hold to him and to his assignes for euer, hath estate but for terme of life.

Tenant in fee simple, is he which hath landes or tenementes to hold to him and to his heires for euer.

By purchase, as when a man hath lands and tenementes by his deede, or by his agreement, to the possession of which he commeth not, by title of discent from none of his auncestors, or his cosins, but by his owne act.

By discent who may be thus described.

He that is tenant in fee simple must be of the whole bloud wh may bee proued by two examples.

1 If a man haue issue two Sonnes by two venters, and the elder purchaseth lands in fee simple, and dieth without issue, the yonger brother shall not haue the land, but the vncle of the elder brother, or some other his nye cosins shall haue it, for ỹ the yonger is but of the halfe bloud to the elder brother.

2 If a man haue a Sonne and daughter by one venter, & a Sonne by an other venter, and the sonne by the first venter, purchaseth lands in fee simple, and dieth without issue, the sister shall haue the land by discent as heire vnto her brother, for that the sister is of the whole bloud to the elder brother.

If the fathers sonne purchase land in fee simple, the vncle shal haue the land as heire vnto the sonne, and not the father, because it cannot lineally ascende.

1 If the foresaid vncle dye without issue, the Father liuing, the Father shall haue the land as heire vnto the vncle, and not vnto the sonne, for that he commeth to the land by collaterall discent, and not by lineal ascention.

2 If landes discend by the Fathers side, the Fathers side shall inherite, and none of the Mothers side.

3 If the sonne die without issue, and haue purchased lands in fee simple they of the bloud of the fathers side shall be heire vnto him before any of the mothers side.

1 If the sonne hauing purchased lands in fee simple haue no heires on

the mothers side.

By the properties of fee simple.

2 Of such thinges whereof a man may haue a manuall occupation, possession or receite as of lands, tenemẽts, rents, or such other, a man shall say in his pleading & in way of barre, that one such was seised in his demesne as of fee, but of such things that lye not in manual occupation, as of an aduowson of a church, or such maner of things, there he shal say, that he was seised as of fee and not in his demesne as of fee.

3 Fee simple is the largest & greatest inheritance that a man can haue.

4 For default of lawful heires the lord shal haue the land held in fee simple by eschete.

3 By the mothers prerogatiue which is twofold.

1 If the sonne haning purchased lands in fee simple haue no heires on the fathers side, then shall the land discend vnto the heire on the mothers side.

2 If a man take a wife inheritrix in fee simple, which hath issue a sonne and then dieth, and the sonne entreth into the tenements as sonne and heire to his mother, and after dieth without issue, the heires of the mothers side ought to inherite the tenementes, and not the heires of the fathers side.

4 By the brothers prerogatiue which is after two sorts.

1 If there be three brethren, and the middle or yonger brother purchase land and dye without issue, the elder brother shall haue the land by discent, for that he is more worthie of bloud.

2 If there be two brethren by diuers venters, and the elder is seised in fee simple and dyeth without issue and his vncle entreth as heire vnto him which also dyeth without issue the yonger sonne shall inherite the tenementes as heire to the vncle, because hee is of the whole bloud to his vncle.

5 By the Sisters prerogatiue.

If a man be seised of land in fee simple, which hath issue a sonne and a daughter by one venter, and a sonne by an other venter, and dieth: and the elder sonne entreth, and dyeth without issue, the daughter shall haue the land, and not the yonger sonne, but if the elder brother die before entrye be made, then the yonger brother shall haue the land. *Quia possessio fratris de feodo simplici facit sororem esse heredem.*

6 By the prerogatiue of the whole kindred.

If a man purchase land in fee simple and dye without issue, euery one that is his next cousin collateral for default of issue may inherite.

Obſeruations vpon the *Analyſis.*

A. THis definition, which Maiſter *Littleton* vſeth, ſoundeth like a good Logicall definition, as conſiſting of the true *genus*, and the proper difference: for this word (inheritance) is the *genus*, which extendeth as well to fee ſimple, as to fee taile, and this word (pure) is a difference, whereby it is diſtinguiſhed from fee taile: for fee ſimple is a pure inheritance, that is without limitation or reſtreint, but fee taile is a limitted or a reſtreigned inheritance. This word (lawfull) in the definition is not idle: but the meaning of it is, that it is an inheritance according to the meaning of common lawe, for if by (lawfull) ſhould be meant rightfull, then a fee ſimple by diſeiſin ſhould be excluded, which I thinke was not Maiſter *Littletons* intent. And againe, if this worde (lawfull) ſhoulde extend to all lawes, inheritance ſhould be heere taken according to the interpretation of other lawes alſo, which

which cannot be. Maiſter *Littleton* well beginneth with the definition, for there are but foure things to be doubted of, firſt, whether a thing be *in rerum natura*, ſecondly, what it is, and of what nature, thirdly, whether it be ſuch and ſo qualified or no, fourthly, why it is ſuch, and ſo qualified: and he that wel openeth theſe foure points, ſhall in all learned diſcourſes ſhewe hymſelfe excellent and abſolute.

B. The nature of fee ſimple may bee ſomewhat vnderſtoode by applying it to the ſubiect to which it apperteineth, for tenant in fee ſimple, and tenure in fee ſimple, beeing *coniugata*, hee that well knoweth the one, muſt of neceſſitie well vnderſtand the other.

C. Maiſter *Littleton* laſtly deſcribeth eſtate in fee ſimple by certaine adiuncts or properties which do greatly ſerue to illuſtrate, and explaine the things whereof wee intreate: they are of two ſortes, externall and internall. Internall are they whiche flowe from the nature of the thing it ſelfe: of ſuch ſorte are the firſt and third properties mentioned in the *Analyſis*, for in that fee ſimple may lineally diſcende, and not lineally aſcende, the nature of the tenure is the onely cauſe, for it beeyng to a man and to hys heyres,

the

the more worthie heire is he that is of the bodie, the leſſe worthie he that is of the bloud and not of the bodie, but the father in regard of the ſonne can be neither of theſe but in regard and by mediation of the vncle he may be heire to the ſonne, becauſe he is of the vncles bloud, ſo that in the direct line it is euident, that the fee ſimple cannot aſcend: and it is a very eſſential propertie to fee ſimple to be the largeſt and greateſt inheritance, becauſe it is to a man and his heires without limitation. Externall properties are theſe, which do ſo go before a thing, or ſo follow it, or ſo cleaue to it, that notwithſtanding there is no neceſſitie of any of theſe: as for example, before the killing of a man, commonly there is ſome brawling and contention of words. With the acte doth concurre the ſighing or groaning of him that is ſlaine, and the flight, feare, lurking, trembling, and vnconſtant anſwere of him that did kill him do follow the acte, howbeit ſome be ſlaine, without the concurrence of theſe circumſtances. There be two ſortes of adiunctes, ſome belonging to the perſon, ſome to the thing it ſelfe, to the perſon as the kinred, countrey, ſexe, age, education, the habit of the bodie, the fortune, the eſtate, the qualities of his minde, the manner of his life. The adiuncts of the thing are the

causes, the place, the time, the manner of doing a thing, and such like. Of these, some be common, and some be proper: common, as if one should commend *Achilles*, because he was of good birth, because he was a great captaine, because he was in fight against the *Troians*, for euery of whiche, *Diomedes* is as much to be commended as *Achilles*. Proper adiuncts be, as if thou shouldest commend *Achilles* for his great valor in killing *Hector* the stoutest of the *Troians*, and for his good fortune in killing *Cygnus*, who being inuulnerable, did barre all the Gretians from comming downe the wall, and because beeing young, and not bound by any othe or leageance, he fought so valiantly for the Gretians. These two later of the proper adiuncts, I call externall, as not flowing from the essence of a thing, but befalling externally to it when it is in *esse*. Of this kinde there are two in the *Analysis*, the seconde and fourth.

The

The Analyſis of Littletons Chapiter of Fee taile.

Fee taile may be diuers waies considered

By the first originall.

Tenant in fee taile is by force of the ſtatute W. 2. cap. 1. for at the common Law before the ſaid ſtatute, all inheritances were fee ſimple.

By the definition.

Inuented. A.

Expounded after ij. ſorts.

Feodum taliatum eſt hereditas in quadam certitudine limitata.

1 If tenant in taile die without iſſue, the donor or his heires ſhall inherite as in their reuerſion, for in euery gift in the taile the reuerſion of the fee ſimple is in the donor.

2 If a man giue lands or tenements to an other to haue and to hold to him and to his heires males or females, he to whom ſuch gift is made hath fee ſimple, for that it is not limitted by the gift of what bodie the iſſue male or female ſhall be.

By the diuerſe kindes thereof.

In reſpect of the nature of the entaile.

Taile general which is to be conſidered by the

Definition.

Inuented.

Taile general is where landes be giuen to one and to the heires of his bodie begotten.

Expounded.

Therefore it is called generall taile, becauſe whatſoeuer woman the tenant taketh to wife, if he haue many wiues, & by each of the haue iſſue, yet any of theſe iſſues by poſſibility may inherite the tenements by force of the ſaid gift, becauſe that euery ſuch iſſue is of his body ingendred. So if lands be giuen to a woman, and to the heires of her body, howbeit that ſhe haue many husbands, yet the iſſue that ſhe hath by each husband may inherite.

By an example or ſpeciall kinde thereof

If tenements be giuen to a man and to his wife, & to the heires of the body of the man ingendred, in this caſe the husband hath eſtate in the general taile, & the wife eſtate but for terme of life.

Taile ſpeciall which is to be examined according to the

Definition.

Inuented.

Tenant in taile ſpecial is where lands & tenements be giuen to a man and his wife (ioindly or ſeuerally) & to the heires of their two bodies begotten.

Expounded after two ſorts.

1 In ſuch caſe none may enherite by force of ſuch gift, but thoſe which be engendred betweene them two, & it is called ſpecial taile; for that if the wife die and he take an other wife, and hath iſſu, the iſſue of the ſecond wife ſhal neuer inherite by force of ſuch gift, nor alſo the iſſue of the ſecond husband if the firſt die.

2 In the ſame maner it is where lands & tenements be giuen by a man vnto another with a wife, which is the daughter or couſin to the giuer in frankmariage, which gift hath inheritance by this word (Frankmaſ) vnto it annexed, howbeit they be not expreſſely ſaid nor rehearſed in the gift, that is to ſay, that theſe donees ſhall haue

theſe lands or tenements to them & to their heires betweene them two ingengred, & this is called ſpecial tail, becauſe the iſſue of the ſecond wife may not inherit & the woman donee in frankmaſ muſt

theſe lands or tenements to them & to their heires betweene them two ingengred, & this is called ſpecial tail, becauſe the iſſue of the ſecond wife may not inherit, & the woman donee in frankmaſ muſt be of kin to the donor, & they ſhal do no ſeruice but feal ie, till the 4. degree to be accompted from the donor be paſt.

Diuerſe kindes thereof.

1 If lands be giuen to the husband and to the wife, and to the heires of the husband which he begetteth of the body of ỹ wife, in this caſe the husbād hath eſtate in ſpecial taile, and the wife but for terme of life.

2 If the gift be made to the husband and to the wife, and to the heires of the wife of her body by the husband ingendred, the wife hath eſtate in ſpecial taile, & the husband but for terme of life.

3 If lands be giuen to the husband & the wife, and to the heires which the husband hath by his wife in this caſe, both haue eſtate in taile ſpecial, for that this word (heires) is not limited more to the one then to the other.

4 If lands be giuen to a man & his heirs w̃ he engẽdreth on the body of his wife in this caſe ỹ husbād hath eſtate in the tail ſpecial, & ỹ wife nothing at al.

In reſpect of the perſons to whom the taile belongeth.

Taile to the heire male which is two fold.

1 If landes be giuen to a man & his heires males of his body ingendred, in ſuch caſe his heire male ſhall inherite, but his iſſue female ſhal neuer inherite.

2 If lands be giuen to a man & to his heires males of his body engendred, & he hath iſſu ij ſonnes & deceaſeth, and the elder ſonne entreth as heire male, and hath iſſue a daughter and deceaſeth, his brother ſhall haue the land and not the daughter, for that the brother is heire male.

Taile to the heire female w̃ is to bee cõſidered by ỹ definition.

Taile to the heire female, is where lands be giuen to a mau & to his heires females of his body ingendred, in this caſe his iſſue female ſhall inherite by force and forme of the ſaid gift, and not the iſſue male, for that in ſuch caſes where the gift is, who ought to inherite, and who not, the will of the donor ſhall be obſerued.

By the properties.

1 Whoſoeuer ſhal inherite by force of a gift in the taile made vnto ỹ heires males it behoueth him to cõuey his diſcent by ỹ males w̃ may be illuſtrated by 2. exãples.

1 If lands be giuen to a man and to his heires males of his body ingendred, and he hath iſſue a daughter, who hath iſſue a ſonne, and deceaſeth, in this caſe the ſonne of the daughter ſhall not inherite by force of the taile, but in ſuch caſe the donor ſhall enter.

2 If lands be giuen to a man and his wife, and to the heires males of their two bodies begotten, and they haue iſſue after the like ſort, the like ſhall happen.

2 The death of a man taketh not away the eſtate of thoſe that be in the tail, as if a man haue iſſue a ſonne & deceaſeth, and land is giuen to the ſonne, and to the heires of the body of his father ingendred, this is a good tail, and yet the father was dead at the time of the gift.

3 The donees and their iſſue ſhall hold of the donor and his heires as he holdeth of the Lord Paramount.

Obſeruations vpon the *Analyſis*.

THis definition, which Maiſter *Littleton* maketh of eſtate taile, conſiſteth likewiſe of *genus*, and of a difference. The *genus* is *hæreditas*, which is common both to it and to fee ſimple: the difference *in quadam certitudine limitata*, by which it is diſtinguiſhed from fee ſimple, for that is *non limitata & ſine certitudine*, and by this definition a man may know what a fee ſimple is, and by the definition of fee ſimple what fee taile is, ſo that the rules of arte are well obſerued, which are that *Rectum eſt iudex ſui obliqui*, and *oppoſita iuxta ſe poſita magis illuceſcunt*.

Though the diuiſion or tenure of eſtate taile both in the Table precedent conſiſt of two members, or two differences, yet the eſpeciall taile is deuided into more partes: and that manner of deuiding is not contrary to the rules of methode, for it is too much curioſitie to exact in euery diuiſion two onely oppoſed eſſentiall differences, and two diſtinct kindes.

There

There be three cauſes wherefore a diuiſion cannot be made by two differences. Firſt becauſe of noe kind of thing, both the eſſential differences cannot certainly bee knowen, but the one of them wee doe expreſſe by a negatiue. Secondly, becauſe that difference which wee ſet downe in the affirmatiue is not alway the true difference. Thirdly, becauſe the diuerſe nature of diuerſe immediate kindes of one thing will not alwaies permit a twofold diuiſion, for though the diuiſion of *Animal in hominem & brutum* bee *binembris* and according to rigorous exaction, yet ſithe there be many kindes of brutiſh creatures, ſome that ſwimme, ſome that flye, ſome that goe, ſome that creepe, and the particulars of theſe kindes doe differ in the quintellence of their nature, ſurely to comprehend all theſe diſtinct thinges vnder two differences is not to be required, becauſe it is either impoſſible, or a thing of exceeding difficultie. But when things are to be handled by way of diſputation, as the arguing of caſes which is of great vſe in the lawe, another methode and courſe muſt be vſed then hath bene taken in the framing of this Analyſis, for there the principall caſe muſt be fully ſet downe, the points of lawe orderly diſtinguiſhed, the reaſons on the one part muſt be firſt ſet downe, with anſweres annexed vnto them, then the reaſons

on the other part, with anſweres likewiſe in their due places: and laſtly, the concluſion of the whole controuerſie debated, whether it were by iudgement, adiournement, or by the conſent of the parties, or by other ſpeciall meane, and for better direction herein (I am deſirous to profit others if I could) I haue ſet downe an homely paterne according to the plaines of my conceit, in the diſpoſing and ouering of a caſe, famous in our yeare bookes, and of great weight and vſe, being the Prior of Mertons caſe, being very often at large argued, namely, in the eighteenth, nineteenth, twentith, and twentie one yeares of the raigne of King Edward the fourth at ſeuerall times, and was likewiſe touched the ſecond yeare of Richard the third, and all the contents of the arguments vpon this caſe deliuered, as many as did concerne the principall points then in queſtion (for by-matters are to be repoſed in a ſeuerall place by themſelues) I haue brought into the compaſſe of a fewe lines, if you reſpect the large leaſes wherein they are handled.

Le

Le case enter le Prior de Merton plaintife, & le Prior de Bingham defendant.

En le. 3. an de H. le. 3. vn fine fuit leuie parenter le Prior de Merton pl. et le Prior de Bingham defonceant sur vn brefe de couenit, que fuit en ceux parolls: cest le finall concord de parēter le Prior de Merton querentem et le Prior de Bingham defonceantem de 5. Markes, et v. s. rent cū pertinentijs en S. et R. sur que vn brief de couenant fuit sumon enter eux que fuit que lauantdit Prior de Bingham acknowledge et grante pur luy et ses successors quē touts iours apres ils payer chescun an al esglise de Merton pur les tenemēts queux il tient del dit prior et pur les teneinēts queux CCC. de CCC. ascun foits tient del dit Prior en les villages auantdits cinque markes, et v. s. a deux termes dans, pur touts suites et seruices, et que il ferroit a le chiefe seignior del fee pur lauantdit Prior de M. et ses successors touts seruices queux apperteignont a les dits tenemēts: et pur cest graunt le dit Prior de M. grant pur luy, et ses successors, que ils voilent garrant al auantdit Prior de Bingham et ses successors touts lauantdits tenements pur les auantdits seruices contra

Scir.faci.18.E.3. 4.22. 19.E.4. 2.47. 20.E.4. 16.21.E.4.60. 2.R.3.5.

omnes gentes: sur que vient en le courte vn I. Prior de Merton et prya scire faci, enuers W. Prior de Bingham dauer execution darrerages del dit rent, que fuerõt due en les ans darrein passe, et il auoit: et fuit returne &c. a quel iour le Prior de Bingham vient eins, et dit que le fine prooue le rente grant a le predecessors del pl. dessre vn rent seruice ou aſcune auter rent issuant hors de terre et nemy vn annuitie, per que entant que il auoit acknowledge, que cest rent fuit execute, il doit auer vn Assise ou Distres, et nemy vn briefe dannuitie; et sur cest ils demurront.

Les quæstions de ley.

1. *Si le fine fuit bien leuie.*
2. *Si le rent soit vn annuitie.*

I. *Negat.* { *Que le fine ne fuit bien leuie.*

Littleton.

A. Ratio prima. Fines ne sont bon effeant leuies de choses queux ne sont in rerum natura al temps del fine leuie, et le rent de que cest fine fuit leuie ne fuit in esse al temps per que &c.

Brian.

Brian.

Ceo ne besoigne. Car si ieo auoy in Islington 20. li. rent issuant de terres de twentie homes per seuerall grauntes, si ieo graunt per fine a vous 20. li. rent hors de lour terres ou tenements in Islington vous naueres 20. li. rent queur ieo auoy in Islington mes vous aueres vn nouell rent: mes est diuersitie ou le chose de que le fine est destre leuie gist en demesne, et ou nemy. Car lou gist en demesne, la doit estre in esse al temps del fine leuie, come si ieo leuie fine de mon terre en dale lou ieo nauera ascun terre en dale, cest fine est voide, mes de chose que poit issuer hors de terre vn fine poit estre leuie, coment que ne soit in rerum natura, come de rent ou common in dale, ou en fait il nauoit ascun common ou rent in dale al temps &c. mes sil auoit common in grosse en ñ le ville, et graunt a moy vn common, et ne monstra quel common, ceo serra construe le common que il auoit en ñ le ville. B. Responsum.

Neale.

Cest fine est leuie de vn mere annuitie, et pur ceo est male, conr si de chose naturallment surdant hors de terre come si ieo conust tout mon dr̃t en vn acre de terre auous et vous per ñ le fine graunt a moy vn annual r̃et de 20. s̃. C. Ratio. 2.

hors de m̃ le terre, cest bon grant, vnc̃ ne fuit ascun originall de ceo: per que &c.

Brian.

Respons. En auncient temps home puissoit auer conus vn fine sans originall, et sil soit leuie a cest iour il poit auer scire facias et si aduowson discend al coparceners et ils ꝑ indenture enrolle voilent agree de presenter ꝑ turne, chescun de eux quant son temps vient auera scire facias: per que &c.

Piggot.

Replicat ad hoc respons. En auncient temps fines fuer̃ leuie deo et ecclesie, mes le ley est ore alter: mes come ieo pensa chescun fine doit auer originall et de accorder a c̃. Car le note est placitum conuentionis, et en nostre case nest ascun coueñ dun annuitie, mes dun rent solement, et si le originall soit de 20. acres et le fine soit leuie de 40. acres quant al 20. le partie serr̃ discharge: car ne fuit ascun originall de eux, et en præcipe quod reddat le fine poit estre leuie del chose en demaunde, car le originall conteigne et concerne c̃. Issint si brief de coueñ soit de 20 acres en dale et le fine est leuie, de 20 acres en sale le fine nest bon, ou si le originall soit de terre arable, et le connusans de pasture.

1. Affir.

1. Affirmat. { Que le fine fuit bien leuie. D. Ratio 1.

Sulyarde.

Si en vn briefe de coueñ port dun mannor, le plaintif graunt le mannor al le defor̃eant, et graunt ouſtre a diſcharger le dit mannor enuers le ſeignior del fee, ceſt bon fine, et vnt̃ le clauſe de diſcharging ne fuit en le briefe de coueñ, donques en ceſt caſe &c.

Sulyarde. E. Ratio 2.

Si en vn briefe de droit de cuſtomes et ſeruices le ſeignior poit releaſer per fine tout ſon droit, que il ad en le terre, et le teñ poit graunt per iñ le fine 20. ſ. annualment, donques &c.

Catesby. R. 3.

Quant vn home acknowledge le droit de terre a vn et vn rẽt eſt reſerue ſur le graunt et rend, ou vn common, ou tot carectæ ligni deſtre priſe del terr̃, ceſt bon, car ils ſont conteigne implicatiue, en le originall, mes ſi le fine eſt leuie dun choſe nient expreſſe ne implide en le originall ceſt voide, donques en ceſt caſe, pur t̃ que le fine eſt dun rent ſeruice, car le fine eſt pro omnibus alijs ſeruitijs per ceſt poll (alijs) eſt implide, que le rent eſt aliquod ſeruitium.

2. Negat. { Que le rent en cest case nest vn annuitie.

Piggot.

F. Ratio, 1. Le fine est que le Prior de Merton pur les seruices auant dits acquite le Prior de Bingham de touts seruices enuers le seignour del fee, et pur ceo cest rent seruice et nemie rent secke.

Collowe.

Respons. Le rent est change per le fine, Car ambideux les parties serront estoppe de denyer lestate prise p le fine, come si home soit seise de terre en fee, et vn fine soit leuie perenter estr̄ et luy, per que lestraunge acknowledge m̄ le terre a luy et a les heires de son corps ingendres, ore son estate est change, issint si home tient per seruice de chiualer, et le signior per fine acknowledge que il tient en soccage ore le tenure est alter, et il tiendra en socage, et en cest case le rent ne poit estre rent seruice, car donques le partie poit distr̄ sur le terre et ceo ne poit estre. Car touts suits quant al terre sont discharge per le fine : et ne poit estre rent charge. Car nul terre est charge oue distr̄ : et rent secke ne poit estre : car donques il serra

demaund

demaund sur le terre: et annuitie ne poit estre: Car le Prior ne poit charge le meason.

Pigot.

Si le Prior de B. ne poit extinguisher les seruices per ses parolles, ou per son act, le rent seruice continue, per q̄ &c. G. Rat. 2.

Si home tient de moy per xx. s̄, et ieo confirme son estate de tener per vn denier pur touts maners de seruices, il ferra fealtie, & cest rent est parcel del auncient rent, per que &c. H. Rat. 3.

2. Affirmat. { Que le rent est vn annuitie.

Starkey.

Si vn home ne poit graunt al auter ceo q̄ il auoit deuant, donques le rent q̄ le Prior de Bingham graunt a le Prior de Merton ne poit estre launcient rent, mes vn nouel rent ou vn annuitie, per que &c. I. Rat. 1.

Si ieo teigne de vous per homage, fealtie, et x. s̄. rent, et ieo voile graunter a vous per fine xii. d. rent pur les tenements queux ieo teigne de vous, cest vn nouel rent, & nemy launcient rent, per que &c. Confir. ratio.

Vauisour.

Vauisor.

Si per fine sur conusans de droit come ceo, vn nouel rent poit este graunt, car cesty a que le conusans est fait poit graunt vn rent a le conusor, et le cause est pur ceo que il serra intende que cesty a que le conusans est fait est seisie del terre: Mes autrement est de fine sur graunt & render, car le ley ne intende que le grauntee est seisie del terre, donques en cest case le rent est vn nouel rent.

K. Rat. 2.

Choke.

Si ceux parolx, que le Prior de Bingham ferra touts les seruices pur le Prior de Merton, ne prouant ceo destre rent seruice: Car si soient seignior et tenant, et le seignior releasa le tenant per fait indent tout son droit que il auoit, reddendo vnum denarium, & faciendo capitali domino seruicia &c. en le behalfe del seignior ceux parolx sont voides, Car per le releasa son seigniorie est extinct, donques en cest case &c.

Rat. 3.

Iudgement.

Trois des Iustices agarderont q̃ le pl̃ poit suer execution per Scire facias, et illint iudgement fuit enter, e maintenant sedente curia, vn vieke Derror fuit mise eins. Et fuit touche en le bank del Roy 2. R. 3. mes nest la decide, ne argue.

Obser-

Obseruations vpon the precedent forme of arguing.

A. The first reason made by Mast. Littleton is drawen from the cause of the thing generally, and specially from the material cause: For if the onely material causes of fines be thinges which are in esse, it is a probable conclusion to say that of this rent being not in esse, a fine could not be leuied. And as the rule of Logicke is, *Quæ eadem sunt eorum generationes et corruptiones, causæ constituentes et corrumpentes eadem sunt:* c. So of such thinges which be the same in kind, the causes material are the same: and therfore the material causes of fines, that is the thing whereof they are leuied, ought to be the same.

c. Arist. Top. 7. c. 1.

B. The answere of Brian to Mast. Littletons reason is by way of distinguishing, for euery answere must be either by direct granting, or direct denying, or els by distinguishing which is partly a granting partly a denying.

C. Mast. Neale his reason is drawen from the same place of Logicke, from which Mast. Littletons was deriued: for he supposeth that an Annuitie is no fit materiall cause whereof a fine may be leuied.

D. Sulyards

D. Sulyards reason is drawen à comparatis paribus from thinges alike probable: For if a man in a writ of Couenant brought of a manor, may graunt and couenant to discharge the said mannor against the Lord of the fee, though in the writ of couenant there were no mentioning of any such discharge: by the like reason a man may leuie a fine of a thing which is not mentioned in the writ of couenant, and which was not in Esse before. And this maner of reasoning is grounded vpon that rule in Logike, *Si duo duobus æque conueniant, & hoc huic conueniat, etiam illud illi conueniet.* f.

f. Arist. Top. 2 c. 4.

E. Sulyards second reason is drawen á simili: For like as in a fine leuied vpon a writ of Right brought of customes and seruices, the tenant may graunt a rent which was not in Esse before: so likewise in this case the fine might be leuied of a rent, which had no being before. And this consequens is warranted by this rule, *Si in vno eorum quæ similia sunt aliquo modo se res habeat, eodem etiam modo in alijs se habebit.* g.

g. Arist. Top. 2 c. 4.

F. The first reason whereby Pigot goeth about to proove that the rent is not an Annuitie is deduced à genere: For if it be truely named by the generall name of seruice in the fine, it must be intended to be a speciall kind of rent seruice, and not a rent secke, according to the rule, *Si aliquid sit genus, species ab eo compra-*

comprehensa participabit natura eius, sed non natura eius quod est contrarium generi. h.

G. Pigot his second reason is drawen a comparatis paribus.

H. His third reason is drawen a simili.

I. Starkey his first reason is drawen a comparatis paribus.

K. The reasons used by Vauisour and Choke to proue the rent to be an Annuitie are drawen a simili.

FINIS.